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HOUSE BILL NO. 174

Offered January 11, 2012

Prefiled January 9, 2012

A BILL to amend and reenact §§ 9.1-185.5 and 9.1-185.8 of the Code of Virginia, relating to bail bondsmen; requirements for property bail bondsmen; suspension of license.

Patron—Knight

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 9.1-185.5 and 9.1-185.8 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-185.5. Bail bondsman licensure requirements.

A. An applicant for a bail bondsman license shall apply for such license in a form and manner prescribed by the Board, and containing any information the Board requires.

B. Prior to the issuance of any bail bondsman license, each bondsman applicant shall:

1. File with the Department an application for such license on the form and in the manner prescribed by the Board.

2. Pass the bail bondsman exam as prescribed by the Board pursuant to this article or have successfully completed a surety bail bondsman exam as required by the State Corporation Commission under former § 38.2-1865.7. Any applicant who improperly uses notes or other reference materials, or otherwise cheats on the exam, shall be ineligible to become a licensed bail bondsman.

3. Submit to fingerprinting by a local or state law-enforcement agency and provide personal descriptive information to be forwarded, along with the applicant's fingerprints, to the Department of State Police Central Criminal Records Exchange. The Central Criminal Records Exchange shall forward the applicant's fingerprints and personal descriptive information to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. The applicant shall pay for the cost of such fingerprinting and criminal records check. The Department of State Police shall forward to the Director of the Department, or his designee, who shall be a governmental entity, the results of the records search from the Central Criminal Records Exchange and the Federal Bureau of Investigation. The Director of the Department, or his designee, who shall be a governmental entity, shall review the record and if the report indicates a prior felony conviction, the individual shall be prohibited from pursuing the application process for issuance of a bail bondsman license unless the individual submits proof that his civil rights have been restored by the Governor or other appropriate authority.

4. Submit the appropriate nonrefundable application processing fee to the Department.

C. Additionally, prior to the issuance of a property bail bondsman license, each property bail bondsman applicant shall provide proof of collateral of \$200,000 on his bonds and proof of collateral of \$200,000 on the bonds of each of his agents. Any collateral that is not in the form of real estate, cash, or certificates of deposit issued by a FDIC-insured financial institution shall be specifically approved by the Department before it may be used as collateral.

1. If the property used as collateral is real estate, such real estate shall be located in the Commonwealth and shall be owned by the property bail bondsman or by any business or company under which the property bail bondsman carries out his bail bonding business. In addition, the property bail bondsman applicant shall submit to the Department:

a. A true copy of the current real estate tax assessment thereof, certified by the appropriate assessing officer of the locality wherein such property is located or, at the option of the property bail bondsman, an appraisal of the fair market value of the real estate, which appraisal shall have been prepared by a licensed real estate appraiser, within one year of its submission.

b. A new appraisal, if, at its discretion, the Department so orders for good cause shown prior to certification. At the discretion of the Department, after the original submission of any property appraisal or tax assessment, further appraisals or tax assessments for that property may not be required more than once every five years.

c. An affidavit by the property bail bondsman applicant that states, to the best of such person's knowledge, the amount of equity in the real estate, and the amounts due under any obligations secured by liens or similar encumbrances against the real estate, including any delinquent taxes, as of the date of the submission. At its discretion, the Department may require additional documentation to verify these amounts.

2. If the property used as collateral consists of cash or certificates of deposit, the property bail

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59 bondsman applicant shall submit to the Department verification of the amounts, and the names of the
60 financial institution in which they are held.

61 3. Any property bail bondsman issued a certificate by a judge pursuant to former § 19.2-152.1, prior
62 to July 1, 1989, who has continuously maintained his certification and who has never provided to a
63 court collateral of \$200,000 or more, shall continue to be exempt from the \$200,000 collateral
64 requirements specified above. Those property bail bondsmen who are exempted from this provision shall
65 satisfy all of the other requirements in this article for bail bondsmen, and shall provide to the
66 Department the collateral amount to which they may bond and provide proof of his prior certification by
67 obtaining a certified copy of: (i) the certificate issued pursuant to former § 19.2-152.1 and (ii) the
68 documents held by the originating court that stated the collateral amount for which they were able to
69 bond.

70 4. Each property bail bondsman, if so directed by the Department, shall place a deed of trust on the
71 real estate that he is using for the limit of his expected bonded indebtedness to secure the
72 Commonwealth and shall name the attorney for the Commonwealth of the affected locality as trustee
73 under the deed of trust, and furnish the Department an acceptable appraisal and title certificate of the
74 real estate subject to any such deed of trust.

75 D. Prior to the issuance of a surety bail bondsman license, each surety bail bondsman applicant shall:

76 1. Submit proof of current licensing as a property and casualty insurance agent validated by the State
77 Corporation Commission.

78 2. Submit copies of each qualifying power of attorney that will be used to provide surety. All
79 qualifying powers of attorney filed with the Department shall contain the name and contact information
80 for both the surety agent and the registered agent of the issuing company. In the event an applicant for a
81 surety bail bondsman license is unable to obtain a qualifying power of attorney prior to the issuance of
82 his license, he may be granted his license, on the condition that each qualifying power of attorney
83 obtained after his licensure be filed with the Department within 30 days after its receipt. A surety bail
84 bondsman shall not be permitted to write bail bonds for any insurance company without first filing the
85 company qualifying power of attorney with the Department.

86 3. All surety bail bondsman licenses in effect with the State Corporation Commission shall become
87 void after June 30, 2005. Applicants for licensure for bail bondsmen may submit an application to the
88 Department on or after May 1, 2005.

89 4. Any surety bail bondsman license issued pursuant to this article shall terminate immediately upon
90 the termination of the licensee's property and casualty insurance agent license, and may not be applied
91 for again until the individual has been issued a new property and casualty insurance agent license. Upon
92 notification from the State Corporation Commission of a license suspension, the Department shall
93 immediately suspend a surety bondsman's license, pending the results of an investigation conducted
94 pursuant to this article. In the event a surety bail bondsman is under investigation by the State
95 Corporation Commission for allegations regarding his activities as a licensed property and casualty
96 agent, the Commission shall notify the Department of such investigation and the Department and the
97 Commission may conduct a joint investigation of the individual. All powers granted to the Department
98 and the Commission regarding investigation and disciplinary proceedings shall be permitted to be
99 applied to any such joint investigation, and both the Department and the Commission shall be permitted
100 to utilize their own rules and internal procedures in determining appropriate disciplinary proceedings, if
101 any.

102 § 9.1-185.8. Professional conduct standards; grounds for disciplinary actions.

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

110 B. A licensed bail bondsman shall not:

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

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

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

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

120 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 agents.

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

For the purposes of this section, a bail bond premium is defined as the amount of money paid to a licensed bail bondsman for the execution of a bail bond.

J. The Department shall suspend the license of any property bail bondsman if he or his agent has not paid any forfeiture of bond within 60 days after notice and final order of the court. The property bail bondsman shall not be eligible to have his license reinstated until such forfeiture has been paid.