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HOUSE BILL NO. 2152

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 9.1 an article numbered 12.1, consisting of sections numbered 9.1-186.15 through 9.1-186.22, relating to Department of Criminal Justice Services; licensure and regulation of charitable bail organizations.*

Patron—Adams, L.R.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 9.1 an article numbered 12.1, consisting of sections numbered 9.1-186.15 through 9.1-186.22, as follows:

*Article 12.1.**Charitable Bail Organizations.***§ 9.1-186.15. Definitions.**

As used in this article, unless the context requires a different meaning:

"Charitable bail organization" means any entity that solicits monetary donations from the public and agrees to use the money solicited to provide bail or post bond for any person.

"Director" means the Director of the Department of Criminal Justice Services.

§ 9.1-186.16. Inapplicability of this article.

The provisions of this article shall not apply to bail bondsmen as defined in § 9.1-185, nor to bail enforcement agents as defined in § 9.1-186.

§ 9.1-186.17. Powers of the Board relating to charitable bail organizations.

The Board shall have full regulatory authority and oversight of charitable bail organizations.

The Board shall adopt regulations that are necessary to implement the provisions of this article. The Board's regulations shall include regulations that (i) establish the qualifications of applicants for licensure and renewal under this article; (ii) examine, or cause to be examined, the qualifications of each applicant for licensure; (iii) levy and collect nonrefundable fees for licensure and renewal that are sufficient to cover all expenses for administration and operation of the program of licensure; (iv) ensure continued competency and prevent deceptive or misleading practices by charitable bail organizations; (v) administer the regulatory system; (vi) provide for receipt of complaints concerning the conduct of any entity whose activities are regulated by the Board pursuant to this article; (vii) provide for investigations and appropriate disciplinary action if warranted; (viii) establish standards for professional conduct, solicitation of monetary donations, documentation and recordkeeping, and reporting ; and (ix) allow the Board to suspend, revoke, or refuse to issue, reissue, or renew a license for just cause.

§ 9.1-186.18. Powers of the Department relating to charitable bail organizations.

A. In addition to the powers otherwise conferred upon it by law, the Department may charge each applicant for licensure or licensee a nonrefundable fee as established by the Board to (i) cover the costs of processing an application for licensure, enforcement of the regulations, and other costs associated with the maintenance of the program of regulation; (ii) conduct investigations to determine the suitability of applicants for licensure; and (iii) conduct investigations to determine if any disciplinary actions against a charitable bail organization are warranted.

B. The Director or his designee may make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or the Board to request production of any relevant records, documents, and physical or other evidence of any person, partnership, association, or corporation licensed or regulated by the Department pursuant to this article. The court may issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence. Costs of the investigation and adjudication of violations of this article or Board regulations may be recovered. All costs recovered shall be deposited into the state treasury to the credit of the Bail Enforcement Agent Regulatory Fund. Such proceedings shall be brought in the name of the Commonwealth by the Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides. The Director, or agents appointed by him, shall have the authority to administer oaths or affirmations for the purpose of receiving complaints and

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59 conducting investigations of violations of this article or any regulation adopted hereunder and to serve
60 process issued by the Department or the Board.

61 **§ 9.1-186.19. Charitable bail organization; licensure, renewal, and revocation.**

62 A. In order to be licensed as a charitable bail organization in accordance with the provisions of this
63 article, such entity shall be (i) a nonprofit organization as described in § 501(c)(3) of the Internal
64 Revenue Code, (ii) organized and operated exclusively for charitable purposes, and (iii) registered as a
65 charitable organization pursuant to § 57-49.

66 B. An applicant for a charitable bail organization license shall apply for such license in a form and
67 manner prescribed by the Board and containing any information the Board requires.

68 C. Prior to the issuance of any charitable bail organization license, each applicant shall:

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

71 2. Submit the appropriate nonrefundable application processing fee to the Department; and

72 3. Submit a \$900 biennial licensure fee to the Department.

73 D. The Director may refuse to issue a charitable bail organization license if the Director determines
74 that an applicant, or an officer or director of the applicant, has (i) demonstrated untrustworthiness or
75 incompetence, (ii) given cause for the revocation or suspension of the certificate, or (iii) failed to
76 comply with any prerequisite for the issuance of the license.

77 E. A license granted to a charitable bail organization by the Department shall authorize such entity
78 to solicit monetary donations from the public and to use the money solicited to provide bail or post
79 bond for any person. Every charitable bail organization license issued pursuant to this article shall be
80 for a term of two years.

81 F. A charitable bail organization license may be renewed for an ensuing two-year period, upon the
82 filing of an application in the form prescribed by the Department, payment of the nonrefundable renewal
83 application processing fee, and payment of the \$900 biennial licensure fee prescribed by the
84 Department. In addition, applicants for renewal of a bail enforcement agent's license shall provide all
85 other documentation as the Department deems appropriate.

86 G. On or before the first day of the month prior to the month its license is due to expire, the
87 licensee shall make application for license renewal and shall at that time pay the renewal application
88 fee and the \$900 biennial licensure fee.

89 H. If an application for license renewal is filed with the Department before the expiration of such
90 license, then the license sought to be renewed shall continue in full force and effect until the license is
91 either approved for renewal or the Director refuses to renew such license.

92 I. The Director may refuse to renew or may revoke or suspend a charitable bail organization license
93 for a reasonable period determined by the Director if, after notice and hearing, the Director determines
94 that an applicant for renewal or a licensee, or an officer or director of the applicant, has (i)
95 demonstrated untrustworthiness or incompetence, (ii) violated this article or regulations adopted
96 hereunder, or (iii) failed to stay current with its registration.

97 **§ 9.1-186.20. Powers and duties of a charitable bail organization.**

98 A charitable bail organization shall:

99 1. Provide bail or post bond only in the amount of \$2,000 or less for a defendant charged with one
100 or more misdemeanors, provided, however, that such organization shall not execute as surety on any
101 bond for any defendant;

102 2. Provide bail or post bond only on behalf of a person who is financially unable, which may
103 constitute a portion or the whole amount of such bail or bond;

104 3. Provide bail or post bond only for a person in the city or county of the charitable bail
105 organization's principal place of business; and

106 4. Not charge a premium or receive compensation for acting as a charitable bail organization.

107 **§ 9.1-186.21. Professional conduct standards; grounds for disciplinary actions.**

108 A. Any violations of the restrictions or standards under this article shall be grounds for placing on
109 probation or sanctioning the charitable bail organization and for refusing to issue or renew or suspend
110 or revoke the charitable bail organization's license. A licensed charitable bail organization is
111 responsible for ensuring that its officers, directors, employees, and agents contracted to perform services
112 for or on its behalf comply with all of the provisions of this article and do not violate any of the
113 restrictions that apply to charitable bail organizations. Violations by a charitable bail organization's
114 officer, director, employee, or agent may be grounds for disciplinary action against the charitable bail
115 organization, including probation, suspension, or revocation of license.

116 B. No licensed charitable bail organization and no officer, director, employee, or agent of such
117 organization shall:

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

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

123 3. Conduct any transaction that demonstrates bad faith, dishonesty, coercion, incompetence,
124 extortion, or untrustworthiness;

125 4. Coerce, suggest, aid and abet, offer promise of favor, or threaten any person on whose bond the
126 organization has posted, or has offered to post, to induce that person to commit any crime;

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

133 6. Fail to comply with any of the statutory or regulatory requirements governing licensed charitable
134 bail organizations;

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

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

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

139 10. Provide bail or post bond for any person if he is also an attorney representing that person.

140 **§ 9.1-186.22. Penalties.**

141 Any entity licensed by the Board or officer, director, employee, or agent of such organization
142 pursuant to this article who violates any provision of this article or Board regulation who is not
143 criminally prosecuted shall be subject to the monetary penalty provided in this section. If the Board
144 determines that a respondent has committed the violation complained of, the Board shall determine the
145 amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The
146 penalty may be sued for and recovered in the name of the Commonwealth.