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HOUSE BILL 715

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Hector H. Balderas

AN ACT

RELATING TO BAIL BONDSMEN; PROVIDING FOR NEW REQUIREMENTS FOR  
QUALIFICATIONS AND LICENSING OF BAIL BONDSMEN AND SOLICITORS;  
ESTABLISHING ADDITIONAL EDUCATIONAL REQUIREMENTS AND PROHIBITED  
PRACTICES FOR BAIL BONDSMEN AND SOLICITORS; REQUIRING A  
NATIONAL AND STATE CRIMINAL BACKGROUND CHECK FOR BAIL BONDSMEN  
AND SOLICITORS; REQUIRING GENERAL LIABILITY INSURANCE FOR BAIL  
BONDSMEN AND SOLICITORS; CREATING THE BAIL BONDSMEN AND  
SOLICITORS ADVISORY COMMITTEE; INCREASING ADMINISTRATIVE FINES;  
PROVIDING CRIMINAL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-51-2 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 929) is amended to read:

"59A-51-2. DEFINITIONS.--As used in ~~[this article]~~ the  
Bail Bondsmen Licensing Law:

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1           A. "bail bondsman" means a limited surety agent or  
2 a property bondsman as hereafter defined;

3           B. "committee" means the bail bondsmen and  
4 solicitors advisory committee;

5           ~~[B.]~~ C. "insurer" means any surety insurer ~~[which]~~  
6 that is authorized to transact surety business in this state;

7           ~~[C.]~~ D. "limited surety agent" means any individual  
8 appointed by an insurer by power of attorney to execute or  
9 countersign bail bonds in connection with judicial proceedings  
10 and receives or is promised money or other things of value  
11 therefor;

12           ~~[D.]~~ E. "property bondsman" means any person who  
13 pledges United States currency, United States postal money  
14 orders or cashier's checks or other property as security or  
15 surety for a bail bond in connection with a judicial proceeding  
16 and receives or is promised therefor money or other things of  
17 value; and

18           ~~[E.]~~ F. "solicitor" means a person who has  
19 contracted with or is employed by a bail bondsman for the  
20 purpose of assisting the bail bondsman in presenting the  
21 defendant in court when required, or to assist in the  
22 apprehension and surrender of defendant to the court or keeping  
23 the defendant under necessary surveillance, and to solicit bail  
24 bond business, to sign property bonds and assist in other  
25 conduct of the business all as authorized by the employer bail

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1 bondsman. This does not affect the right of a bail bondsman to  
2 hire counsel or to ask assistance of law enforcement officers."

3 Section 2. Section 59A-51-4 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 931, as amended) is amended to read:

5 "59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for  
6 license as bail bondsman or solicitor pursuant to the  
7 provisions of the Bail Bondsmen Licensing Law shall be  
8 qualified as follows:

9 A. be an individual not less than [~~eighteen~~]  
10 twenty-one years of age;

11 B. be a citizen of the United States;

12 C. not have been convicted of a felony, with the  
13 exception of a conditional discharge of a felony conviction, or  
14 anyone properly licensed as of January 1, 2005;

15 D. not be a law enforcement, adjudication, jail,  
16 court or prosecution official or an employee thereof or an  
17 attorney, official authorized to admit to bail, or state or  
18 county officer;

19 E. if for license as bondsman, pass a written  
20 examination testing the applicant's knowledge and competence to  
21 engage in the bail bondsman business;

22 F. be of good personal and business reputation and  
23 have not been found to have violated professional ethical  
24 standards;

25 G. if to act as a property bondsman, be financially

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1 responsible and provide the surety bond or deposit in lieu  
2 thereof as required in accordance with Section 59A-51-8 NMSA  
3 1978;

4 H. if to act as a limited surety agent, be  
5 appointed by an authorized surety insurer; and

6 I. if for license as a solicitor, have been so  
7 appointed by a licensed bail bondsman subject to issuance of  
8 the solicitor license."

9 Section 3. Section 59A-51-4.1 NMSA 1978 (being Laws 1999,  
10 Chapter 296, Section 1) is amended to read:

11 "59A-51-4.1. EDUCATIONAL REQUIREMENTS.--

12 A. In order to be eligible to take the examination  
13 required to be licensed as a bail bondsman, the applicant shall  
14 complete not less than thirty clock hours of formal classroom  
15 education in subjects pertinent to the duties and  
16 responsibilities of a bail bondsman, including ethics and all  
17 laws and rules related to the bail bond business. In addition,  
18 the applicant shall complete one hundred twenty hours of on-  
19 the-job training under the direct supervision of a sponsoring  
20 bail bondsman who shall certify in writing that ~~[he]~~ the  
21 sponsoring bail bondsman has taught the applicant the subjects  
22 pertinent to the duties and responsibilities of a bail  
23 bondsman, including ethics and all laws and rules related to  
24 the bail bond business, and that the applicant is prepared to  
25 take the examination. The scope of the examination shall be as  
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1 broad as the bail bond business.

2 B. Instead of the education requirement in  
3 Subsection A of this section, an applicant may become eligible  
4 to take the examination required to be licensed as a bail  
5 bondsman by apprenticing for a minimum of six months with a  
6 sponsoring bail bondsman. The sponsoring bail bondsman shall  
7 certify in writing that ~~[he]~~ the sponsoring bail bondsman has  
8 taught the applicant the subjects pertinent to the duties and  
9 responsibilities of a bail bondsman, including ethics and all  
10 laws and rules related to the bail bond business, and that the  
11 applicant is prepared to take the examination. The scope of  
12 the examination shall be as broad as the bail bond business.

13 C. In order to be eligible to take the examination  
14 required to be licensed as a solicitor, ~~[each person]~~ the  
15 applicant shall complete not less than ~~[ten]~~ thirty clock hours  
16 of formal classroom education in subjects pertinent to the  
17 duties and responsibilities of a solicitor, including ethics  
18 and all laws and rules related to the bail bond business. In  
19 addition, the applicant for a solicitor's license shall  
20 complete ~~[thirty]~~ one hundred twenty hours of on-the-job  
21 training under the direct supervision of a sponsoring bail  
22 bondsman who shall certify in writing that ~~[he]~~ the sponsoring  
23 bail bondsman has taught the applicant the subjects pertinent  
24 to the duties and responsibilities of a solicitor, including  
25 ethics and all laws and rules related to the bail bond

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1 business, and that the applicant is prepared to take the  
2 examination. The scope of the examination shall be as broad as  
3 the bail bond business.

4 D. Prior to renewal of a bail bondsman's or  
5 solicitor's license, a licensee shall complete annually not  
6 less than [~~fifteen~~] twenty clock hours of continuing education  
7 in subjects pertinent to the duties and responsibilities of a  
8 bail bondsman or solicitor, including ethics and all laws and  
9 rules related to the bail bond business. Such continuing  
10 education shall not include a written or oral examination.

11 E. A provider approved by the superintendent to  
12 offer prelicensing classroom education for bail bondsmen or  
13 continuing education classes for bail bondsmen and solicitors  
14 shall be required to offer such classes in at least two  
15 geographic areas of the state until such time as the  
16 superintendent determines that sufficient classes are available  
17 statewide.

18 F. It is a violation of the [~~New Mexico~~] Insurance  
19 Code for a person to falsely represent to the superintendent  
20 that the education requirements of this section have been  
21 complied with.

22 G. The superintendent shall adopt and promulgate  
23 such rules as are necessary for the effective administration of  
24 this section."

25 Section 4. Section 59A-51-5 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 932, as amended by Laws 1999, Chapter 272,  
2 Section 26 and also by Laws 1999, Chapter 289, Section 39) is  
3 amended to read:

4 "59A-51-5. APPLICATION FOR LICENSE.--

5 A. An individual desiring to be licensed as bail  
6 bondsman or solicitor under [~~Chapter 59A, Article 51 NMSA 1978~~]  
7 the Bail Bondsmen Licensing Law shall file with the  
8 superintendent written application on a form as prescribed and  
9 furnished by the superintendent, together with application for  
10 qualifying examination if for bail bondsman license.

11 B. With application for license to act as property  
12 bondsman the applicant shall file with the superintendent [~~his~~]  
13 the applicant's detailed financial statement under oath and a  
14 schedule of charges and the rating plan proposed to be used in  
15 writing bail bonds. The schedule shall conform to rules and  
16 regulations promulgated by the superintendent.

17 C. Application for a solicitor's license must be  
18 endorsed by the appointing bail bondsman, who shall therein  
19 [~~obligate himself~~] be obligated to supervise the solicitor's  
20 activities [~~in~~] on the bondsman's behalf.

21 D. The application shall be accompanied by:

22 (1) a recent credential-sized full-face  
23 photograph of the applicant [~~together with such~~];

24 (2) two full sets of fingerprints;

25 (3) a certified copy of a birth certificate or

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1 proof of United States citizenship, if the applicant was not  
2 born in the United States; and

3 (4) any other additional proof of identity as  
4 the superintendent may reasonably require.

5 E. Upon receipt of the items listed in Subsection D  
6 of this section, the superintendent shall conduct an  
7 appropriate check of available records and shall forward the  
8 necessary information to the federal bureau of investigation to  
9 conduct a national criminal history background check and to the  
10 department of public safety to conduct a state criminal history  
11 background check. The applicant shall pay the cost of  
12 obtaining the criminal history background check from the  
13 federal bureau of investigation and the department of public  
14 safety.

15 ~~[E.]~~ F. As part of an application for a license, a  
16 nonresident applicant shall appoint the superintendent, on a  
17 form prescribed and furnished by the superintendent, as agent  
18 on whom may be served all legal process issued by a court in  
19 this state in any action involving the nonresident licensee.  
20 The appointment is irrevocable and continues for so long as an  
21 action involving the nonresident licensee could arise.  
22 Duplicate copies of process shall be served upon the  
23 superintendent or other person in apparent charge of the  
24 insurance division during the superintendent's absence,  
25 accompanied by payment of the process service fee specified in

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1 Section 59A-6-1 NMSA 1978. Upon service the superintendent  
2 shall promptly forward a copy by certified mail, return receipt  
3 requested, to the nonresident licensee at [~~his~~] the nonresident  
4 licensee's last address of record with the superintendent.

5 Process served and copy forward as so provided constitutes  
6 personal service upon the nonresident licensee.

7 [~~F.~~] G. A nonresident licensee shall also file with  
8 the superintendent a written agreement to appear before the  
9 superintendent pursuant to a notice of hearing, show cause  
10 order or subpoena issued by the superintendent and deposited,  
11 postage paid, by certified mail in a letter depository of the  
12 United States post office, addressed to the nonresident  
13 licensee at [~~his~~] the nonresident licensee's last address of  
14 record with the superintendent, and that upon failure of the  
15 nonresident licensee to appear, the nonresident licensee  
16 consents to subsequent suspension, revocation or refusal of the  
17 superintendent to continue the license."

18 Section 5. A new section of the Bail Bondsmen Licensing  
19 Law is enacted to read:

20 "[NEW MATERIAL] BOND AND GENERAL LIABILITY INSURANCE  
21 REQUIRED--BAIL BONDSMEN AND SOLICITORS.--

22 A. A bail bondsman or solicitor license shall not  
23 be issued pursuant to the Bail Bondsmen Licensing Law unless  
24 the applicant files with the superintendent a commercial  
25 general liability certificate of insurance.

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1           B. A bail bondsman or solicitor licensed pursuant  
2 to the Bail Bondsmen Licensing Law shall maintain the general  
3 liability certificate of insurance, and, upon failure to do so,  
4 the license of the bail bondsman or solicitor shall be  
5 suspended and shall not be reinstated until an application in  
6 the form prescribed by the superintendent is filed together  
7 with an acceptable general liability certificate of insurance.  
8 The superintendent may deny the application, notwithstanding  
9 the applicant's compliance with this section:

10                   (1) for any reason that would justify a  
11 refusal to issue or a suspension or a revocation of a license;  
12 or

13                   (2) for the performance by the applicant of  
14 any practice while under suspension for failure to keep the  
15 general liability certificate of insurance in force for which a  
16 license pursuant to the Bail Bondsmen Licensing Law is  
17 required.

18           C. A general liability certificate of insurance  
19 executed and filed with the superintendent shall remain in  
20 force until the company issuing the general liability  
21 certificate of insurance has terminated future indemnity by  
22 notice to the superintendent."

23           Section 6. Section 59A-51-9 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 936) is amended to read:

25           "59A-51-9. ISSUANCE, REFUSAL OF LICENSE.--The

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1 superintendent shall act upon application for license under  
2 ~~[this article]~~ the Bail Bondsmen Licensing Law within a  
3 reasonable period after the application has been filed with  
4 ~~[him]~~ the superintendent and the results of a national and  
5 state criminal background check have been received. If the  
6 superintendent finds that the application is complete, that the  
7 applicant has taken and passed any required examination, has  
8 paid all applicable fees and is otherwise qualified for the  
9 license, ~~[he]~~ the superintendent shall issue to the applicant  
10 in appropriate form the license applied for. Otherwise, the  
11 superintendent shall refuse to issue the license and shall  
12 promptly notify the applicant thereof in writing stating the  
13 grounds for the refusal."

14 Section 7. A new section of the Bail Bondsmen Licensing  
15 Law is enacted to read:

16 "[NEW MATERIAL] BAIL BONDSMEN AND SOLICITORS ADVISORY  
17 COMMITTEE--CREATION AND ORGANIZATION.--

18 A. The "bail bondsmen and solicitors advisory  
19 committee" is created. The committee consists of the following  
20 seven members appointed by the governor:

- 21 (1) two licensed limited surety agents;
  - 22 (2) two licensed property bondsmen;
  - 23 (3) two licensed solicitors; and
  - 24 (4) one member of the public; provided that
- 25 the public member or the member's spouse shall not have been

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1 licensed pursuant to the Bail Bondsmen Licensing Law, or have a  
2 financial interest, direct or indirect, in a bail bondsmen  
3 company or a related business.

4 B. The committee shall select a chairperson, a vice  
5 chairperson and other officers as it deems necessary.

6 C. The committee shall meet at the call of the  
7 chairperson but not less than four times annually. A majority  
8 of members constitutes a quorum for the transaction of  
9 business. The affirmative vote of at least a majority of the  
10 quorum present shall be necessary for an action to be taken by  
11 the committee.

12 D. Members shall serve five-year terms; provided  
13 that at the time of initial appointment, the governor shall  
14 appoint two members to abbreviated terms to allow for  
15 staggering of terms of subsequent appointees. A vacancy shall  
16 be filled by appointment by the governor for the remainder of  
17 the unexpired term.

18 E. Members of the committee shall receive per diem  
19 and mileage as provided in the Per Diem and Mileage Act and  
20 shall receive no other compensation, perquisite or allowance."

21 Section 8. A new section of the Bail Bondsmen Licensing  
22 Law is enacted to read:

23 "[NEW MATERIAL] COMMITTEE--DUTIES.--The committee shall  
24 furnish advice, gather information and make recommendations to  
25 the superintendent on the following:

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- 1           A. licensing bail bondsmen and solicitors;  
2           B. minimum training and educational standards for  
3 licensing;  
4           C. continuing education requirements;  
5           D. conducting criminal history background checks;  
6 and  
7           E. any other matters related to the qualification  
8 and licensure of bail bondsmen and solicitors pursuant to the  
9 Bail Bondsmen Licensing Law."

10           Section 9. Section 59A-51-13 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 940, as amended) is amended to read:

12           "59A-51-13. PRACTICES.--

13           A. A bail bondsman or solicitor shall not:

14                   (1) suggest or advise the employment of or  
15 name for employment any particular attorney to represent [his]  
16 the bail bondsman's or solicitor's principal;

17                   (2) pay a fee or rebate or give or promise  
18 anything of value to a jailer, policeman, peace officer,  
19 committing magistrate or any other person who has power to  
20 arrest or to hold in custody or to any public official or  
21 public employee in order to secure a settlement, compromise,  
22 remission or reduction of the amount of any bail bond or  
23 estreatment thereof or to secure delay or other advantage;

24                   (3) pay a fee or rebate or give anything of  
25 value to an attorney in bail bond matters, except in defense of

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1 any action on a bond;

2 (4) pay a fee or rebate or give or promise  
3 anything of value to the principal or anyone [~~in his~~] on the  
4 bail bondsman's or solicitor's behalf;

5 (5) participate in the capacity of an attorney  
6 at a trial or hearing of one on whose bond [~~he~~] the bail  
7 bondsman or solicitor is surety;

8 (6) except for the premium received for the  
9 bond, fail to return any collateral security within a  
10 reasonable time after the termination of liability on the bond;  
11 [~~or~~]

12 (7) charge or accept anything of value except  
13 the premium on the bond and any extraterritorial recovery  
14 expenses, but the bondsman may accept collateral security or  
15 other indemnity if:

16 (a) such collateral security or other  
17 indemnity is reasonable in relation to the amount of the bond;

18 (b) no collateral or security in  
19 tangible property is taken by pledge or debt instrument that  
20 allows retention, sale or other disposition of such property  
21 upon default of premium payment;

22 (c) no collateral or security interest  
23 in real property is taken by deed or any other instrument  
24 unless the bail bondsman's interest in the property is limited  
25 to one hundred percent of the amount of the bond;

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1 (d) the collateral or security taken by  
2 the bondsman is not pledged directly to any court as security  
3 for an appearance bond; and

4 (e) the person from whom the collateral  
5 or security is taken is given a receipt describing the  
6 condition of the collateral or security at the time it is taken  
7 into the custody of the bondsman;

8 (8) attempt to take a defendant into custody  
9 without first providing notification to the local law  
10 enforcement agency of the jurisdiction where the defendant is  
11 believed to be located;

12 (9) forcibly enter any vehicle, watercraft,  
13 dwelling or other structure, movable or immovable, without  
14 first providing notification to the local law enforcement  
15 agency of the jurisdiction where the vehicle, watercraft,  
16 dwelling or other structure is located;

17 (10) enter an occupied vehicle, watercraft,  
18 dwelling or other structure, movable or immovable, without the  
19 consent of the occupants who are present at the time of entry;  
20 or

21 (11) wear, carry or display any uniform,  
22 badge, shield or other insignia or emblem that implies that the  
23 bail bondsman or solicitor is an employee, officer or agent of  
24 this state, a political subdivision of this state or the  
25 federal government.

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1           B. After apprehending a defendant, a bail bondsman  
2 or solicitor shall immediately notify the local law enforcement  
3 agency of the jurisdiction where the defendant was apprehended  
4 of:

5                     (1) the identity of the defendant;

6                     (2) the identity of the bail bondsman or  
7 solicitor; and

8                     (3) where the bail bondsman or solicitor is  
9 taking the defendant to surrender the defendant into custody.

10           ~~[B-]~~ C. When a bail bondsman accepts cash as  
11 collateral, the bondsman shall deposit the cash in the  
12 bondsman's trust account and give a written receipt for same,  
13 and this receipt shall give in detail a full account of the  
14 collateral received.

15           ~~[C-]~~ D. Law enforcement, adjudication and  
16 prosecution officials and their employees, attorneys-at-law,  
17 officials authorized to admit to bail and state and county  
18 officers shall not directly or indirectly receive any benefits  
19 from the execution of any bail bond.

20           ~~[D-]~~ E. A bail bondsman shall not sign nor  
21 countersign in blank any bond, nor shall the bondsman give a  
22 power of attorney to or otherwise authorize anyone to  
23 countersign the bondsman's name to bonds unless the person so  
24 authorized is a licensed bondsman directly employed by the  
25 bondsman giving such power of attorney.

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1           ~~[E-]~~ F. No bail bond agency shall advertise as or  
2 hold itself out to be a surety insurer.

3           ~~[F-]~~ G. Every bail bondsman shall have a permanent  
4 street address, and all bail bond business shall be conducted  
5 from that address.

6           ~~[G-]~~ H. Every bail bondsman shall transact all bail  
7 bond business, surety or property, in the bondsman's proper  
8 individual name or one agency name as stated on the application  
9 for license and on the license as issued by the  
10 superintendent."

11           Section 10. Section 59A-51-16 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 943) is amended to read:

13           "59A-51-16. ADMINISTRATIVE FINE IN LIEU.--

14           A. The superintendent may, in ~~[his]~~ the  
15 superintendent's discretion, in lieu of license suspension,  
16 revocation or refusal, and except on a second offense, impose  
17 upon the licensee an administrative penalty of ~~[one hundred~~  
18 ~~dollars (\$100)]~~ one thousand dollars (\$1,000), or, if the  
19 superintendent has found ~~[wilful]~~ willful misconduct or  
20 ~~[wilful]~~ willful violation on the part of the licensee, an  
21 administrative penalty of ~~[five hundred dollars (\$500)]~~ three  
22 thousand dollars (\$3,000).

23           B. The superintendent may allow the licensee a  
24 reasonable period, not to exceed thirty ~~[+30]~~ days, within  
25 which to pay to superintendent the amount of the penalty so

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1 imposed. If the licensee fails to pay the penalty in its  
2 entirety to the superintendent within the period so allowed,  
3 the license of the licensee shall stand suspended or revoked,  
4 or continuation refused, as the case may be, upon expiration of  
5 such period and without any further proceedings."

6 Section 11. Section 59A-51-18 NMSA 1978 (being Laws 1984,  
7 Chapter 127, Section 945) is amended to read:

8 "59A-51-18. PENALTY.--~~[Any]~~ A person [violating] who  
9 violates any of the provisions of [this article shall upon  
10 conviction thereof be fined not more than one thousand dollars  
11 (\$1,000)] the Bail Bondsmen Licensing Law is guilty of a  
12 misdemeanor and shall be sentenced pursuant to Section 31-19-1  
13 NMSA 1978."

14 Section 12. TEMPORARY PROVISION--TRANSITION.--A bail  
15 bondsman or solicitor licensed pursuant to the Bail Bondsmen  
16 Licensing Law prior to July 1, 2006 shall apply for licensure  
17 pursuant to the 2006 amended Bail Bondsmen Licensing Law prior  
18 to October 31, 2006 to receive a license without meeting the  
19 examination or educational requirements of the 2006 amended  
20 act. The superintendent of insurance shall continue to license  
21 individuals pursuant to the Bail Bondsmen Licensing Law in  
22 effect prior to July 1, 2006 until July 1, 2006.

23 Section 13. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2006.