

1 HOUSE BILL 312

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 James E. Smith

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9  
10 AN ACT

11 RELATING TO BAIL BONDSMEN; AMENDING, REPEALING AND ENACTING  
12 SECTIONS OF THE BAIL BONDSMEN LICENSING LAW TO PROVIDE FOR  
13 QUALIFICATIONS AND EDUCATIONAL REQUIREMENTS FOR LICENSURE.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "59A-51-2. DEFINITIONS.--As used in [~~this article~~] the  
19 Bail Bondsmen Licensing Law:

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

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

24 C. "limited surety agent" means any individual  
25 appointed by an insurer by power of attorney to execute or

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1 countersign bail bonds in connection with judicial proceedings  
2 and receives or is promised money or other things of value  
3 therefor;

4 D. "property bondsman" means any person who pledges  
5 United States currency, United States postal money orders or  
6 cashier's checks or other property as security or surety for a  
7 bail bond in connection with a judicial proceeding and receives  
8 or is promised therefor money or other things of value; and

9 E. "solicitor" means a person employed by a bail  
10 bondsman for the purpose of assisting the bail bondsman in  
11 presenting the defendant in court when required, or to assist  
12 in the apprehension and surrender of the defendant to the court  
13 or in keeping the defendant under necessary surveillance, and  
14 to solicit bail bond business, to sign property bonds and to  
15 assist in other conduct of the business all as authorized by  
16 the employer bail bondsman. This does not affect the right of  
17 a bail bondsman to hire counsel or to ask assistance of law  
18 enforcement officers. A bail bondsman shall register a  
19 solicitor with the superintendent within seven days of  
20 employment."

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

23 "59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for  
24 license as bail bondsman or solicitor pursuant to the  
25 provisions of the Bail Bondsmen Licensing Law shall be

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1 qualified as follows:

2 A. be an individual not less than eighteen years of  
3 age;

4 B. be a citizen of the United States;

5 C. be a high school graduate or have passed a  
6 general equivalency diploma examination;

7 [~~G.~~] D. not have been convicted of a felony [~~with~~  
8 ~~the exception of a conditional discharge of a felony~~  
9 ~~conviction~~] or anyone properly licensed as of January 1, [~~2005~~]  
10 2013;

11 [~~D.~~] E. not be a law enforcement, adjudication,  
12 jail, court or prosecution official or an employee thereof or  
13 an attorney, official authorized to admit to bail or state or  
14 county officer;

15 [~~E.~~] F. if for license as bondsman, pass a written  
16 examination testing the applicant's knowledge and competence to  
17 engage in the bail bondsman business;

18 [~~F.~~] G. be of good personal and business  
19 reputation;

20 [~~G.~~] H. if to act as a property bondsman, be  
21 financially responsible and provide the surety bond or deposit  
22 in lieu thereof as required in accordance with Section  
23 59A-51-8 NMSA 1978;

24 [~~H.~~] I. if to act as a limited surety agent, be  
25 appointed by an authorized surety insurer; and

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1           ~~[F.]~~ J. if for license as a solicitor, have been so  
2 appointed by a licensed bail bondsman subject to issuance of  
3 the solicitor license."

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

6           "59A-51-4.1. EDUCATIONAL REQUIREMENTS.--

7           A. In order to be eligible to take the examination  
8 required to be licensed as a bail bondsman or solicitor, the  
9 applicant shall complete ~~[not less than thirty clock hours of~~  
10 ~~formal classroom education in subjects pertinent to the duties~~  
11 ~~and responsibilities of a bail bondsman, including ethics and~~  
12 ~~all laws and rules related to the bail bond business]~~  
13 pre-licensing requirements as prescribed by rule.

14 Pre-licensing requirements shall include formal classroom  
15 education, the form and content of which shall be subject to  
16 approval by the superintendent. In addition, the applicant  
17 shall complete ~~[one hundred twenty]~~ thirty hours of on-the-job  
18 training under the direct supervision of a ~~[sponsoring]~~  
19 licensed bail bondsman who shall certify in writing that ~~[he~~  
20 ~~has taught]~~ the applicant has been taught the subjects  
21 pertinent to the duties and responsibilities of a bail  
22 bondsman, including ethics and all laws and rules related to  
23 the bail bond business, and that the applicant is prepared to  
24 take the examination. ~~[The scope of the examination shall be~~  
25 ~~as broad as the bail bond business.~~

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

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

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

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

15           ~~[F.]~~ C. It is a violation of the New Mexico  
16 Insurance Code for a person to falsely represent to the  
17 superintendent that the education requirements of this section  
18 have been complied with or to fail to register with the  
19 superintendent.

20           ~~[G.]~~ D. The superintendent shall adopt and  
21 promulgate such rules as are necessary for the effective  
22 administration of this section."

23           SECTION 4. Section 59A-51-5 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 932, as amended by Laws 1999, Chapter 272,  
25 Section 26 and also by Laws 1999, Chapter 289, Section 39) is

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1 amended to read:

2 "59A-51-5. APPLICATION FOR LICENSE.--

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

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

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

19 D. The application shall be accompanied by a recent  
20 credential-sized full-face photograph of the applicant together  
21 with such additional proof of identity as the superintendent  
22 may reasonably require.

23 E. As part of an application for a license, a  
24 nonresident applicant shall appoint the superintendent, on a  
25 form prescribed and furnished by the superintendent, as agent

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1 on whom may be served all legal process issued by a court in  
2 this state in any action involving the nonresident licensee.  
3 The appointment is irrevocable and continues for so long as an  
4 action involving the nonresident licensee could arise.  
5 Duplicate copies of process shall be served upon the  
6 superintendent or other person in apparent charge of the  
7 insurance division during the superintendent's absence,  
8 accompanied by payment of the process service fee specified in  
9 Section 59A-6-1 NMSA 1978. Upon service, the superintendent  
10 shall promptly forward a copy by certified mail, return receipt  
11 requested, to the nonresident licensee at [~~his~~] the nonresident  
12 licensee's last address of record with the superintendent.  
13 Process served and copy forward as so provided constitutes  
14 personal service upon the nonresident licensee.

15 F. A nonresident licensee shall also file with the  
16 superintendent a written agreement to appear before the  
17 superintendent pursuant to a notice of hearing, show cause  
18 order or subpoena issued by the superintendent and deposited,  
19 postage paid, by certified mail in a letter depository of the  
20 United States post office, addressed to the nonresident  
21 licensee at [~~his~~] the nonresident licensee's last address of  
22 record with the superintendent, and that upon failure of the  
23 nonresident licensee to appear, the nonresident licensee  
24 consents to subsequent suspension, revocation or refusal of the  
25 superintendent to continue the license."

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1           SECTION 5. Section 59A-51-8 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 935) is amended to read:

3           "59A-51-8. BONDING REQUIREMENTS, PROPERTY BONDSMEN.--

4           A. Prior to the issuance of a license to act as  
5 property bondsman the applicant therefor shall deposit with the  
6 superintendent a surety bond in favor of the superintendent, or  
7 in lieu thereof a certificate of deposit, securities or a  
8 letter of credit issued by an institution, acceptable to the  
9 superintendent, and which letter is irrevocable for the term of  
10 the license, in a total aggregate amount of not less than  
11 twenty-five thousand dollars (\$25,000), conditioned to pay the  
12 actual damages resulting to the state or to any member of the  
13 public from any violation by the property bondsman of the  
14 provisions of [~~this article~~] the Bail Bondsmen Licensing Law or  
15 any other insurance laws. Surety bonds shall be executed by a  
16 surety insurer authorized to do business in this state.

17           B. The bond or deposit shall be maintained for the  
18 duration of the license, or, in the case of a surety bond,  
19 until the surety is released from liability by the  
20 superintendent or until the bond is canceled by the surety. In  
21 addition, the bond or deposit shall be maintained until all  
22 bonds that have been posted with all courts become exonerated.  
23 Without prejudice to any liability incurred prior to expiration  
24 or cancellation, the bond may expire, or the surety may cancel  
25 a bond by giving written notice to the superintendent at least

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1 thirty [~~30~~] days prior to the effective date of the  
2 cancellation. The licensee shall immediately replace a bond  
3 expired or so [~~cancelled~~] canceled or make the required deposit  
4 in lieu thereof."

5 SECTION 6. Section 59A-51-13 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 940, as amended) is amended to read:

7 "59A-51-13. PRACTICES.--

8 A. A bail bondsman or solicitor shall not:

9 (1) suggest or advise the employment of or  
10 name for employment any particular attorney to represent [~~his~~]  
11 the bail bondsman's or solicitor's principal;

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

19 (3) pay a fee or rebate or give anything of  
20 value to an attorney in bail bond matters, except in defense of  
21 any action on a bond;

22 (4) pay a fee or rebate or offer a reduction  
23 in rates, charges or premiums or give or promise anything of  
24 value to the principal or anyone [~~in his~~] on behalf of the  
25 principal;

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

4 (6) except for the premium received for the  
5 bond, fail to return any collateral security within a  
6 reasonable time after the termination of liability on the bond;  
7 or

8 (7) charge or accept anything of value except  
9 the premium on the bond and any extraterritorial recovery  
10 expenses, but the bondsman may accept collateral security or  
11 other indemnity if:

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

14 (b) no collateral or security in  
15 tangible property is taken by pledge or debt instrument that  
16 allows retention, sale or other disposition of such property  
17 upon default of premium payment;

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

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

25 (e) the person from whom the collateral

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1 or security is taken is given a receipt describing the  
2 condition of the collateral or security at the time it is taken  
3 into the custody of the bondsman.

4 B. When a bail bondsman accepts cash as collateral,  
5 the bondsman shall deposit the cash in the bondsman's trust  
6 account and give a written receipt for same, and this receipt  
7 shall give in detail a full account of the collateral received.

8 C. Law enforcement, adjudication and prosecution  
9 officials and their employees, attorneys-at-law, officials  
10 authorized to admit to bail and state and county officers shall  
11 not directly or indirectly receive any benefits from the  
12 execution of any bail bond.

13 D. A bail bondsman shall not sign nor countersign  
14 in blank any bond, nor shall the bondsman give a power of  
15 attorney to or otherwise authorize anyone to countersign the  
16 bondsman's name to bonds unless the person so authorized is a  
17 licensed bondsman directly employed by the bondsman giving such  
18 power of attorney.

19 E. No bail bond agency shall advertise as or hold  
20 itself out to be a surety insurer.

21 F. Every bail bondsman shall have a permanent  
22 street address, and all bail bond business shall be conducted  
23 from that address.

24 G. Every bail bondsman shall transact all bail bond  
25 business, surety or property, in the bondsman's proper

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1 individual name or one agency name as stated on the application  
2 for license and on the license as issued by the  
3 superintendent."

4 SECTION 7. Section 59A-51-14 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 941, as amended) is amended to read:

6 "59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO  
7 CONTINUE LICENSE.--

8 A. The superintendent may deny, suspend, revoke or  
9 refuse to continue any license issued under the Bail Bondsmen  
10 Licensing Law for any of the following reasons:

11 (1) any cause for which issuance of the  
12 license could have been refused had it then existed and been  
13 known to the superintendent;

14 (2) a material misstatement, misrepresentation  
15 or fraud in obtaining the license;

16 (3) any violation of the laws of this state  
17 relating to bail or the bail bond business;

18 (4) conviction of any felony, regardless of  
19 whether the conviction resulted from conduct related to the  
20 bail bond business [~~with the exception of a conditional~~  
21 ~~discharge of a felony conviction~~];

22 (5) misappropriation, conversion or unlawful  
23 withholding of money belonging to insurers or others and  
24 received in the conduct of business under the license;

25 (6) fraudulent or dishonest practices in the

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1 conduct of business under the license;

2 (7) failure to comply with, or willful  
3 violation of, any provision of the Bail Bondsmen Licensing Law  
4 or proper order, rule or regulation of the superintendent or  
5 any court of this state;

6 (8) any activity prohibited in Section  
7 59A-51-13 NMSA 1978;

8 (9) failure or refusal, upon demand, to pay  
9 over to any insurer [~~he~~] the licensee represented, any money  
10 coming into [~~his~~] the licensee's hands belonging to the  
11 insurer;

12 (10) failure to preserve without use and  
13 retain separately or to return collateral taken as security on  
14 any bond to the principal, indemnitor or depositor of  
15 collateral when the principal, indemnitor or depositor is  
16 entitled to such collateral;

17 (11) for knowingly having in the bail  
18 bondsman's employ a person whose bail bond business license has  
19 been revoked, suspended or denied in this or any other state;  
20 or

21 (12) failure, neglect or refusal to supervise  
22 a solicitor's activities on the bail bondsman's behalf.

23 B. When, in the judgment of the superintendent, the  
24 licensee in the conduct of affairs under the license has  
25 demonstrated incompetency, untrustworthiness, conduct or

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1 practices rendering [~~him~~] the licensee unfit to engage in the  
2 bail bond business, or making [~~his~~] the licensee's continuance  
3 in such business detrimental to the public interest, or that  
4 [~~he~~] the licensee is no longer in good faith engaged in the  
5 bail bond business, or that [~~he~~] the licensee is guilty of  
6 rebating, or offering to rebate [~~his~~] the licensee's  
7 commissions in the case of limited surety agents or premiums in  
8 the case of [~~professional~~] property bondsmen, and for such  
9 reasons is found by the superintendent to be a source of  
10 detriment, injury or loss to the public, [~~he~~] the  
11 superintendent shall revoke or suspend the license.

12 C. In case of the suspension or revocation of  
13 license of any bail bondsman, the license of any or all other  
14 bail bondsmen who are members of the same agency and any or all  
15 solicitors employed by such agency, who knowingly were parties  
16 to the act that formed the ground for the suspension or  
17 revocation shall likewise be suspended or revoked, except for  
18 the purpose of completing pending matters, and those persons  
19 who knowingly were parties to the act are prohibited from being  
20 licensed as a member of or bail bondsman or solicitor for some  
21 other agency.

22 D. No license under the Bail Bondsmen Licensing Law  
23 shall be issued, renewed or permitted to exist when the same is  
24 used directly or indirectly to circumvent the provisions of the  
25 Bail Bondsmen Licensing Law."

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1           SECTION 8. Section 59A-51-16 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 943) is amended to read:

3           "59A-51-16. ADMINISTRATIVE FINE IN LIEU.--

4           ~~[A. The superintendent may, in his discretion, in~~  
5 ~~lieu of license suspension, revocation or refusal, and except~~  
6 ~~on a second offense, impose upon the licensee an administrative~~  
7 ~~penalty of one hundred dollars (\$100), or, if the~~  
8 ~~superintendent has found wilful misconduct or wilful violation~~  
9 ~~on the part of the licensee, an administrative penalty of five~~  
10 ~~hundred dollars (\$500).~~

11           ~~B. The superintendent may allow the licensee a~~  
12 ~~reasonable period, not to exceed thirty (30) days, within which~~  
13 ~~to pay to superintendent the amount of the penalty so imposed.~~  
14 ~~If the licensee fails to pay the penalty in its entirety to the~~  
15 ~~superintendent within the period so allowed, the license of the~~  
16 ~~licensee shall stand suspended or revoked, or continuation~~  
17 ~~refused, as the case may be, upon expiration of such period and~~  
18 ~~without any further proceedings] Any person violating the~~  
19 ~~provisions of the Bail Bondsmen Licensing Law shall, upon~~  
20 ~~conviction or upon admission of a violation, be subject to~~  
21 ~~administrative penalties. The amount of such penalties shall~~  
22 ~~be at the discretion of the superintendent and shall take into~~  
23 ~~consideration the face-value dollar amount of the bond and the~~  
24 ~~nature and severity of the violation.~~"

25           SECTION 9. A new section of the Bail Bondsmen Licensing

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1 Law is enacted to read:

2 "[NEW MATERIAL] PREMIUM RATES.--The superintendent shall  
3 conduct public hearings for the purpose of promulgating the  
4 premium rates, schedule of charges and rating plan to be  
5 charged and used by bail bondsmen. No premium rate that has  
6 not been promulgated or otherwise approved by the  
7 superintendent shall be charged for any bail bond. Premium  
8 rates promulgated by the superintendent shall not be excessive,  
9 inadequate or unfairly discriminatory."

10 SECTION 10. REPEAL.--Section 59A-51-18 NMSA 1978 (being  
11 Laws 1984, Chapter 127, Section 945) is repealed.