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HOUSE BILL 50

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

James E. Smith and Daniel A. Ivey-Soto

AN ACT

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

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:

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

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

C. "limited surety agent" means any individual
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]~~ be properly licensed as of January 1,
10 ~~[2005]~~ 2015;

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

25 ~~B. Instead of the education requirement in~~

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

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

25 ~~D.]~~ B. Prior to renewal of a bail bondsman's or

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

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

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

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

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

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1 "59A-51-5. APPLICATION FOR LICENSE.--

2 A. An individual desiring to be licensed as bail
3 bondsman or solicitor under [~~Chapter 59A, Article 51 NMSA 1978~~]
4 the Bail Bondsmen Licensing Law shall file with the
5 superintendent a written application on a form as prescribed
6 and furnished by the superintendent, together with an
7 application for a qualifying examination [~~if for bail bondsman~~
8 ~~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 office
7 of superintendent of insurance [~~division~~] during the
8 superintendent's absence, accompanied by payment of the process
9 service fee specified in Section 59A-6-1 NMSA 1978. Upon
10 service, the superintendent shall promptly forward a copy by
11 certified mail, return receipt requested, to the nonresident
12 licensee at [~~his~~] the nonresident licensee's last address of
13 record with the superintendent. Process served and copy
14 forward as so provided constitutes personal service upon the
15 nonresident licensee.

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

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1 superintendent to continue the license."

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

4 "59A-51-8. BONDING REQUIREMENTS, PROPERTY BONDSMEN.--

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

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

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1 or cancellation, the bond may expire, or the surety may cancel
2 a bond by giving written notice to the superintendent at least
3 thirty [~~(30)~~] days prior to the effective date of the
4 cancellation. The licensee shall immediately replace a bond
5 expired or so [~~cancelled~~] canceled or make the required deposit
6 in lieu thereof."

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

9 "59A-51-13. PRACTICES.--

10 A. A bail bondsman or solicitor shall not:

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

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

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

24 (4) pay a fee or rebate or offer a reduction
25 in rates, charges or premiums or give or promise anything of

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1 value to the principal or anyone [~~in his~~] on behalf of the
2 principal;

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

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

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

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

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

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

24 (d) the collateral or security taken by
25 the bondsman is not pledged directly to any court as security

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1 for an appearance bond; and

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

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

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

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

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

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

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1 G. Every bail bondsman shall transact all bail bond
2 business, surety or property, in the bondsman's proper
3 individual name or one agency name as stated on the application
4 for license and on the license as issued by the
5 superintendent."

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

8 "59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO
9 CONTINUE LICENSE.--

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

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

16 (2) a material misstatement, misrepresentation
17 or fraud in obtaining the license;

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

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

24 (5) misappropriation, conversion or unlawful
25 withholding of money belonging to insurers or others and

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1 received in the conduct of business under the license;

2 (6) fraudulent or dishonest practices in the
3 conduct of business under the license;

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

8 (8) any activity prohibited in Section
9 59A-51-13 NMSA 1978;

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

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

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

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

25 B. When, in the judgment of the superintendent, the

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

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

24 D. No license under the Bail Bondsmen Licensing Law
25 shall be issued, renewed or permitted to exist when the same is

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1 used directly or indirectly to circumvent the provisions of the
2 Bail Bondsmen Licensing Law."

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

5 "59A-51-16. ADMINISTRATIVE FINE IN LIEU.--

6 A. The superintendent may, in [~~his~~] the
7 superintendent's discretion, in lieu of license suspension,
8 revocation or refusal, and except on a second offense, impose
9 upon the licensee an administrative penalty of one hundred
10 dollars (\$100), or, if the superintendent has found wilful
11 misconduct or wilful violation on the part of the licensee, an
12 administrative penalty [~~of five hundred dollars (\$500)]~~ not to
13 exceed one thousand dollars (\$1,000).

14 B. The superintendent may allow the licensee a
15 reasonable period, not to exceed thirty [~~(30)~~] days, within
16 which to pay to superintendent the amount of the penalty so
17 imposed. If the licensee fails to pay the penalty in its
18 entirety to the superintendent within the period so allowed,
19 the license of the licensee shall stand suspended or revoked,
20 or continuation refused, as the case may be, upon expiration of
21 such period and without any further proceedings."

22 SECTION 9. A new section of the Bail Bondsmen Licensing
23 Law is enacted to read:

24 "[NEW MATERIAL] PREMIUM RATES.--The superintendent shall
25 conduct public hearings for the purpose of promulgating the

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1 premium rates, schedule of charges and rating plan to be
2 charged and used by bail bondsmen. No premium rate that has
3 not been promulgated or otherwise approved by the
4 superintendent shall be charged for any bail bond. Premium
5 rates promulgated by the superintendent shall not be excessive,
6 inadequate or unfairly discriminatory."

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

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