

CHAPTER 177
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 151
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2 AS AMENDED BY HOUSE AMENDMENT NO. 1
TO HOUSE AMENDMENT NO. 2
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO BAIL BOND AGENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Subchapter II, Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 4331. Purpose.

~~(a)~~ This subchapter governs the qualifications and procedures for the licensing of bail agents. This subchapter shall establish the qualifications for granting licenses to ~~professional~~ bail agents, establish the procedures to be followed in determining the initial and continuing qualifications for such persons, and provide standards for such persons' authorities, duties, responsibilities and prohibitions in a manner that will provide guidance to such personnel and control over such personnel by the Commissioner for the benefit and protection of the citizens of the State.

~~(b) Producer licensing is primarily governed by Chapter 17 of this title. In the event of a conflict between the provisions of this subchapter and Chapter 17 of this title, the provisions of this subchapter shall govern unless expressly provided otherwise.~~

§ 4332. Definitions.

For purposes of this chapter, the following definitions shall apply:

(a) "Bail agent" ~~or "licensee" or "Bail producer"~~ means a surety bail agent or a property bail agent, person required to be licensed under the laws of this State to sell, solicit or negotiate contracts of surety bail bond insurance and appointed by a surety insurer that is authorized to transact business in this State to sell, solicit or negotiate contracts of surety bail bond insurance. The term "bail agent" shall also be deemed to include the terms "bail bondsman", "bail bond agent", "bail bonding agent" or any other similar term or phrase intended to mean a person or entity performing the function of issuing bail bonds in the State of Delaware. The term bail agent does not include the term "bail enforcement agent" as the same is used in Chapter 55 of Title 24. A surety bail agent may also act as a property bail agent, provided the surety bail agent complies with all provisions of this subchapter applicable to property bail agents.

(b) "Business entity" shall mean a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity. ~~have the meaning ascribed to it in § 1702 of this title.~~

(c) "Collateral" means United States currency, United States postal money orders or cashier's checks or other property pledged as security or surety for a bail bond in connection with a judicial proceeding.

~~(d)~~ "Commissioner" shall have the meaning ascribed to it in § 102 of this title.

~~(e)~~ "Court" means any court of this State that has the power to set bail to enforce the appearance of a defendant in a criminal or civil proceeding.

~~(f)~~ "Department" shall have the meaning ascribed to it in § 102 of this title.

~~(g)~~ "Designated bail agent" or "Designated Responsible Licensed Producer" means the licensed bail agent who is the head or manager of a bail agent business entity that employs 1 or more licensed bail agents.

~~(h)~~ "Home state" means the District of Columbia or any state or territory of the United States in which a surety bail agent maintains that bail agent's principal place of residence or principal place of business and is licensed to act as a surety bail agent.

~~(h)~~ "License" shall mean a document issued by this State's Insurance the Commissioner authorizing a person to act as a bail agent. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(i)~~ "Negotiate" shall mean the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a surety or property bail bond concerning any of the substantive benefits, terms or conditions of the surety or property bail bond. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(j)~~ "Nonresident bail agent" ~~means any licensed bail agent whose principal place of business or residence is located in any state or territory other than Delaware.~~

~~(k)~~ "Person" shall mean an individual or a business entity. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(l)~~ "Premium" is the consideration for a surety or property bail bond by whatever name called.

~~(m)~~ "Property bail" means United States currency, United States postal money orders or cashier's checks, real property or other property.

~~(n)~~ "Property bail agent" means any person who pledges United States currency, United States postal money orders or cashier's checks or other property bail as security or surety for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value. Any person who charges a fee for or makes a business of furnishing property bail in any court proceeding , or who furnishes property bail in four or more court cases in any one year whether for compensation or otherwise, shall be deemed a property bail agent and shall be subject to the provisions of this subchapter. ~~Unless otherwise prohibited by this chapter, a bail agent or licensee under this subchapter may also act as a property bail agent. A property bail agent who is not a licensee appointed by an insurer under this chapter shall be obligated to pay any and all taxes, fees or the like for which any insurer would be obligated under this title. A property bail agent who is not licensed as an insurance producer shall be subject to the jurisdiction of the Department of Insurance and be obligated to meet all of the requirements of this subchapter and Chapter 17 of this title insofar as they apply to bail agents.~~

~~(o)~~ "Revocation" shall mean recalling or taking back a license or licenses for a minimum period of 12 months. Any insurer appointments of such license shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements for issuance of a new license under this subchapter. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(p)~~ "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company, a person or business entity. ~~shall have the meaning ascribed to it in § 1702 of this title.~~

~~(q)~~ "Solicit" shall mean attempting to sell a surety or property bail bond or asking or urging a person to apply for a surety or bail bond ~~bail bond.~~ ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(r)~~ "Surety bail agent" means a person required to be licensed under the laws of this State to sell, solicit or negotiate contracts of surety bail bond insurance and appointed by a surety insurer that is authorized to transact business in this State to sell, solicit or negotiate contracts of surety bail bond insurance.

~~(s)~~ "Surety insurer" shall mean an insurer having a certificate of authority from the Department to issue surety contracts or bonds to guarantee the performance of any person licensed under this subchapter.

~~(t)~~ "Suspension" shall mean to bar temporarily the privileges of a bail agent. A suspension shall also include a suspension of the appointment of a surety bail agent by the surety insurer. Upon the expiration of the suspension period and upon satisfactory completion of such terms and conditions as the Commissioner has imposed pursuant to the suspension, all licenses and appointments shall be reinstated. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(u)~~ "Termination" shall mean the cancellation of the relationship between a surety insurer and the surety bail agent or the termination of a surety bail agent's authority to transact surety insurance ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(v)~~ "Uniform Application" shall mean the current version of the NAIC Uniform Application for resident producer licensing. ~~have the meaning ascribed to it in § 1702 of this title.~~

~~(w)~~ "Uniform Business Entity Application" shall mean the current version of the NAIC Uniform Business Entity Application for resident business entities~~have the meaning ascribed to it in § 1702 of this title.~~

§ 4333. Application for license as a bail agent and licensure; ~~nonresident bail agent.~~

(a) A person applying for a bail agent ~~producer~~ license shall make application to the Commissioner on the Uniform Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application and shall declare under penalty of denial, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief.

(b) In addition to compliance with this section 4333, every person seeking licensure as a surety bail agent shall comply with section 4333A of this subchapter, and every person seeking licensure as a property bail agent shall comply with section 4333B of this subchapter.

~~(c)~~ Before approving the application, the Commissioner shall find that the individual:

(1) Is at least 18 years of age;

(2) Is a resident of the State of Delaware. For purposes of establishing Delaware residency, it shall be sufficient to show that the applicant maintains an office within the State of Delaware that complies with all requirements of Sections 4341 and 4346 of this Title.

~~(2)(3) Has not committed any of the following acts: act that is a ground for denial, suspension or revocation set forth in this chapter and § 1712-1721 of this title~~

(i) Provided incorrect, misleading, incomplete or materially untrue information in the license application;

(ii) Violated any insurance laws, or violated any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

(iii) Obtained or attempted to obtain a license through misrepresentation or fraud;

(iv) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business;

(v) Intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(vi) Pled guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country;

(vii) Admitted or been found to have committed any insurance unfair trade practice or fraud;

(viii) Used fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;

(ix) Had an insurance producer or bail agent license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(x) Forged another's name to an application for insurance or to any document related to an insurance transaction;

(xi) Improperly used notes or any other reference material to complete an examination for an insurance license;

(xii) Knowingly accepted surety bond business from an individual who is not licensed, who's license has been suspended or revoked, or who has been barred from acting as a bail agent by any court;

(xiii) Failed to comply with an administrative or court order imposing a child support obligation; or

(xiv) Failed to pay state income tax or comply with any administrative or court order directing payment of state income tax.

~~(3)(4)~~ Has paid the fees set forth in Chapter 7 of this title;

~~(4)(5)~~ Has successfully passed the examinations for the lines of authority for which the person has applied, unless specifically exempted from such examination by this subchapter;

~~(5) Has identified a home state as a principal place of business;~~

(6) Has not been suspended or prohibited from acting as a bail agent by any court, or had a license suspended or revoked by the District of Columbia or any state or territory of the United States. The Commissioner shall verify the applicant's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; and

~~(7) Has, in the case of a property bail agent, established that the individual is financially responsible pursuant to such rules and regulations as may be established by the Commissioner and provided such surety bond or deposit in lieu thereof as required by § 4336 of this title hereof.~~

(d) A person applying for, or having been granted, a bail agent license, shall disclose to the Commissioner the identity of each person having or seeking to acquire a ten percent or greater financial interest in (i) the bail agent's business or (ii) any one or more bail bonds pledged by or on behalf of the applicant or licensee. Before any person may acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, such person must be licensed as a bail agent under this section. No applicant for a license or licensee shall allow a person to acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, unless the person seeking to acquire such interest is licensed as a bail agent under this subchapter.

~~(e)~~(e) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or such other person or persons as the Commissioner shall designate by rule or regulation.

~~(f)~~(f) Each application shall further contain, at the applicant's expense, a statement background check of the applicant's criminal history, dated within 45 days of the application. The background check shall consist of: (1) a report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person; and (2) a report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (federal CHRI report). The Division of State Police shall be the intermediary for the purposes of this paragraph, which the applicant shall obtain from the Delaware State Bureau of Identification pursuant to § 8513(a)(2) of Title 11.

~~(g)~~(g) All collateral, premiums, return premiums or other funds received in any manner by a bail agent or bail business entity shall be held in a fiduciary capacity and shall be accounted for by such bail agent or bail business entity.

~~(h)~~(h) A ~~nonresident~~ person who has ~~shall~~ received a nonresident bail agent license under prior law, shall not be permitted to renew the bail agent's license, unless such person shall comply with all provisions of this subchapter, including without limitation the residency requirement set forth in this section. establish Delaware residency under sub-section (b)(2) of this section, and successfully pass the examination under sub-section (b)(5) of this section, in addition to meeting all other applicable requirements for resident licensing- if:

~~(1) The person is currently licensed as a bail agent and in good standing in that person's home state;~~

~~(2) The person has submitted the proper request for licensure and has paid the fees required by Chapter 7 of this title;~~

~~(3) The person has submitted or transmitted to the Commissioner the application for licensure that the person submitted to that person's home state, or in lieu of the same, a completed Uniform Application or forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application; and~~

~~(4) The person's home state awards nonresident bail agent licenses to residents of this State on the same basis as this State.~~

~~(5) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or such other person or persons as the Commissioner shall designate by rule or regulation.~~

~~(6) The Commissioner may verify the nonresident's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.~~

~~(7) A nonresident bail agent who moves from one state to another state or a resident bail agent who moves from this State to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence for which no license fee or license application is required.~~

~~(8) As a condition to continuation of a nonresident bail agent license issued under this section, the licensee shall maintain a resident bail agent license in that licensee's home state. The nonresident bail agent license issued under this section shall terminate and be surrendered immediately to the Department if the home state bail agent license terminates for any reason, unless the bail agent has been issued a license as a resident bail agent in that bail agent's new home state. Notification of such change, including both the old and new address, to the Department must be made as soon as possible, but no later than 30 days after obtaining a new state resident license. A new state resident license is required for a nonresident license issued by the Department to remain valid. The new state resident license must have reciprocity with this State in order for the nonresident license not to terminate.~~

~~(g)(h) Nothing contained in this subchapter or Chapter 17 of this title shall apply to any person who may pledge money or property for no fee or remuneration directly with a court on behalf of a defendant under such rules or procedures as may be approved by the court.~~

~~(h)(i) The applicant for a bail agent license shall bear all costs associated with the application or any reapplication.~~

~~(j) Upon the Department's determination that the application is complete, the applicant has passed all required examinations and is otherwise qualified for the license applied for, the Department shall thereupon issue the license.~~

§ 4333A. Additional Application Requirements for Surety Bail Agents.

(a) In addition to the requirements of section 4333, every applicant for a surety bail agent license shall file with the Commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing such applicant to execute undertakings of bail and to solicit and negotiate such undertakings on its behalf.

(b) An appointment of a person as a surety bail agent by a surety insurer pursuant to this subsection shall constitute certification by such insurer that, to the best of the insurer's knowledge and belief, such person is competent, financially responsible and suitable to serve as a representative of the insurer. No person shall represent to the public that such person has the authority to represent an insurer as its surety bail agent until such person has been appointed by an insurer as such agent in accordance with this section. An insurer shall be bound by the acts of such person within the scope of such person's actual authority as such insurer's agent.

(c) Each appointment shall, by its terms, continue in force until: (i) Termination of the surety bail bond agent's license; or (ii) the filing of a notice of termination with the Commissioner by the surety insurer or its representative or by such surety bail agent.

(d) Each insurer shall annually conduct an audit, for the period from January first through December thirty-first, of each of its appointed surety bail agents to ensure such agents are charging the

premium rate as required by section 4347 of this subchapter. Not later than forty-five days after the closing of the year (period of each audit), each insurer shall notify the Commissioner of the failure of any surety bail bond agent to charge the premium rate approved by the Commissioner pursuant to chapter 25. Such notice shall include the name of the surety bail bond agent, the case docket number if assigned, the total amount of the bail bond, the date the bail bond was executed, the amount of the premium charged and reported to the surety insurer, the State, County and Court in which the bond was executed, the five-digit identification code assigned to the insurer by the National Association of Insurance Commissioners and the date the premium was due.

§ 4333B. Additional Application Requirements for Property Bail Agents.

(a) In addition to the requirements of section 4333, every applicant for a property bail agent license shall file with the Commissioner a statement under oath of the assets and liabilities of the applicant.

(b) A property bail agent shall have a continuing duty (1) to advise the Commissioner in writing under oath of any material change in such property bail agent's assets or liabilities affecting such property bail agent's responsibility as a property bail agent; and (2) at any time, upon request of the Commissioner, furnish the Commissioner with a statement under oath of such property bail agent's assets and liabilities, including all bail bonds on which such property bail agent is obligated.

(c) The applicant shall file with his or her application for licensure all rates and other charges proposed for use in writing bail bonds. Such rating plan must be approved by the Commissioner prior to issuance of the license. No rate or other charge may be imposed in connection with the property bail agent's business, unless it has been approved in advance by the Commissioner.

§ 4334. Application for license as a business entity.

(a) A business entity advertising and acting as a bail agent is required to obtain a bail producer business entity insurance license. All surety bail bond contract transactions under the business entity license must be completed by a licensed bail agent of this State. Non-licensed individuals may perform tasks that are strictly clerical in nature such as assisting customers to complete applications and taking payments and providing receipts or other documentation to principal, indemnitors customers or other persons, but only under the supervision of a licensed agent who shall be responsible for any non-compliance with this subchapter by the non-licensed individual.

(b) Application for a business entity license shall be made using the Uniform Business Entity Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Business Entity Application.

(c) Before approving the application, the Commissioner shall find that:

(1) The business entity has paid the fees set forth in Chapter 7 of this title; and

(2) The business entity has designated a licensed bail agent or producer licensed under ~~Chapter 17 of this Title~~ chapter responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.

(d) The Commissioner may require any documents reasonably necessary to verify the information contained in an application.

§ 4335. License renewal.

(a) A person who is licensed as a bail agent shall renew the license in accordance with the same requirements established for insurance producers under Chapters 7 and 17 of this title. As a condition of renewal, the licensee also shall certify that he or she is in compliance with all requirements set forth in this subchapter for the issuance of an initial license.

(b) In addition, such person shall be required to show that since the last renewal or initial application in this state, neither the person nor any business in which the person is or was an owner, partner, officer or director, or member or manager of limited liability company, has not been suspended or prohibited in this state or any other jurisdiction from acting as a bail agent by any court, or otherwise been involved in an administrative proceeding regarding any professional or occupational license, or registration at the time of renewal.

§ 4336. Bonds.

(a) At the time of the application for license as a bail agent, the applicant shall file with the Department a bond executed and issued by a surety insurer authorized to transact business in the State in the minimum amount of \$20,000, which bond shall secure the faithful performance of the applicant's duties as a bail agent. A bail agent license shall be automatically suspended if the bond is not in force or if the security referred to in subsection (c) of this section is impaired or unavailable to the Department.

(b) The bond shall have the following characteristics:

(1) The bond must be conditioned upon a full accounting and payment to the person entitled thereto of money, property or other matters coming into the licensee's possession through bail bond transactions under the license.

(2) The bond shall be in favor of the State and shall specifically authorize recovery by the Commissioner of the damages sustained if the licensee violates any of the terms of the license or the applicable laws and regulations of this State.

(3) The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

(4) The bond must remain in force until released by the Commissioner, or cancelled by the surety. The surety may cancel the bond upon 30-days' written notice to the licensee and the Commissioner provided that the surety shall remain liable for any obligation arising under the bond prior to the effective date of cancellation or termination.

~~(c) In lieu of a surety bond, an applicant for licensure or a licensee may assign or post cash, negotiable securities, irrevocable letter or letters of credit or similar instruments under such terms as may be approved by the Department.~~

§ 4337. Examination for license as bail agent.

(a) Any natural person who intends to apply for a license as a bail agent, must personally take and pass a written examination of that person's competence to act as such. After passing the examination, the person may apply to the Commissioner for a bail agent license.

(b) The scope of the examination shall encompass all aspects of the bail bond business as shall be determined by the Department.

(c) The Department may make arrangements for administration and grading by an independent testing service.

(d) Any individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for a reexamination and remit all required fees and forms before being permitted to take the reexamination.

(e) All examination score reports are valid for a period of 12 months from the date of examination.

(f) A bail agent, whose license lapses and whose license is not suspended or revoked is exempt from retaking the examination required by this section if the bail agent applies for and is reinstated within 12 months after the date of lapse. All fees and fines associated with the lapsed and reinstated license must be paid in full prior to the Department's approval of the request for reinstatement. ~~However, a penalty of double the regular license fee shall be required for any renewal fee received after the due date and within the first 6 months from the due date of the renewal fee. A licensee who does not pay within 6 months of the due date but pays prior to the expiration of 12 months from the due date shall be subject to a fine of not less than \$200 and not more than \$1,000 prior to the reinstatement of the license.~~

§ 4338. Issuance of license; notice of refusal to issue license; fees not refundable.

(a) Upon the Department's determination that the application is complete, the applicant has passed all required examinations and is otherwise qualified for the license applied for, the Department shall thereupon issue the license.

(b) A bail agent license shall remain in effect:

(1) Unless revoked or suspended;

(2) As long as the fee set forth in Chapter 7 of this title is paid and educational requirements as established by law or regulation for bail agents are met by the due date; ~~and/or~~

(3) Unless the bail agent fails to procure or maintain in full force and effect a bond required by § 4336 of this title herein; and

(4) As long as the license has been renewed in compliance with § 4335 of this subchapter.

(c) If a bail agent fails to comply with subsection (b) of this section above, the Department shall, without a hearing, deem the bail agent's license administratively lapsed until the requirements of subsection (b) of this section are met and the bail agent has satisfied all monetary and/or educational obligations and costs necessary under ~~§ 1707(g) of this title~~ this subchapter to restore the license, provided that such action is taken within 1 year of the date the license is administratively suspended. However, a penalty of double the regular license fee shall be required for any renewal fee received after the due date and within the first 6 months from the due date of the renewal fee. A licensee who does not pay within 6 months of the due date but pays prior to the expiration of 12 months from the due date shall be subject to a fine of not less than \$200 and not more than \$1,000 prior to the reinstatement of the license. After 1 year, the bail agent's license shall be deemed revoked and the bail agent would be required to reapply for licensure under § 4333 of this title as a new applicant.

(d) If the applicant for a bail agent license fails to meet the requirements of this subchapter or any applicable regulation, the Department shall refuse to issue the license and shall notify the applicant of such refusal stating the grounds for the refusal. The notice of refusal shall constitute an order of the Commissioner as provided for in § 323 of this title.

(e) Any fees required to be paid pursuant to this subchapter are nonrefundable.

(f) The license shall contain the licensee's name, address, ~~the expiration date~~ and personal identification number, and the date of issuance, the lines of authority, and any other information the Department deems necessary.

(g) Licensees shall inform the Department by any means approved by the Department of a change of address within 30 days of the change. Failure to timely inform the Department of a change in legal name or address shall result in a penalty pursuant to § 1712(d) of this title.

~~(h) The Commissioner may issue a new license for any lost, stolen or destroyed license issued pursuant to this chapter upon written request from the licensee and payment of appropriate fees for such duplicate license.~~

§ 4339. Waiver of license fee.

A licensed bail agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance approved by the Commissioner may request a waiver of license fees and/or the extension of time to reinstate a license under such procedures as may be established by the Department. The bail agent may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures as a result of such military service or approved extenuating circumstance.

§ 4340. Contractual services.

(a) In order to assist in the performance of the Department's duties, the Commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to bail agent producer-licensing that the Commissioner and the nongovernmental entity may deem appropriate.

(b) The Commissioner may participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry where bail agent licenses and appointments may be centrally or simultaneously affected for all states that require a bail agent license and participate in such centralized producer license registry. If the Commissioner finds that participation in such a centralized producer license registry is in the public interest, the Commissioner may adopt by rule any uniform

standards and procedures as necessary to participate in the registry including the central collection of all fees for licenses or appointments that are processed through the registry.

§ 4341. Records.

~~(a) The bail agent shall maintain at that bail agent's principal place of business in this State, and transmit to the Commissioner upon request, the license issued by the Department, together with such records as may be reasonably required by the Department to: (1) Evaluate the reasonableness of rates or ensure that such rates are not excessive, inadequate or unfairly discriminatory; (2) evaluate the financial condition or trade practices of property bail agents, surety bail agents and insurers executing bail bonds; and (3) evaluate the performance of the property bail agents, surety bail agents and insurers executing bail bonds in accordance with appropriate criminal justice system goals and standards. Such records shall show, for each bail bond, policy or contract placed or countersigned by or through the licensee, names of the insurers, principals, insureds, bond or policy number, expiration date thereof, premium payable under the terms of the bond, policy or contract, and such other information as the Department may, from time to time, require. Records shall be retained and available for inspection by the Commissioner for a period of at least 3 years after the bond has been exonerated by the courts. The records shall be open to examination by the Department at all times as provided for in Chapter 3 of this title.~~

~~(b) Each licensee, as a minimum requirement for office records shall maintain:~~

~~(1) A daily bond register which shall be the original and permanent record of all bonds or undertakings executed by the licensee, which shall state the number of the Power of Attorney form, date bond was executed, the State, County and Court in which the bond was executed, the case docket number if assigned, name of principal, amount of bond, premium charged, premium reported to surety company, security or collateral received, indemnity agreements, a copy of the court receipt for the property bail, disposition of bond, and date of disposition.~~

~~(2) An individual file for each principal for whom bond is made which shall contain the original application for bail bond or undertaking, copy of premium receipt, copy of collateral receipt, copy of a bond discharge if issued, security or collateral affidavit, where security or collateral is located, information as to any security or consideration received by the agency or licensee in connection with each particular bail bond or undertaking and purpose for which it was received, receipt or release executed by the person or persons posting security or collateral evidencing the return of such security or collateral and indemnity agreement as executed by any co-indemnitors.~~

~~(3) For each bail bond, policy or contract placed or countersigned by or through the licensee, names of the insurers, principals, insureds, bond or policy number, expiration date thereof, premium payable under the terms of the bond, policy or contract.~~

§ 4342. ~~Appointment of surety bail agents.~~ Transfer bonds.

A bail agent who is licensed by another state, but is not licensed as a bail agent in Delaware, may post a bail bond in Delaware only through a transfer bond posted by a bail agent licensed by the Department. Every Delaware bail agent who executes or countersigns a transfer bond shall indicate in writing on the bond the name and address of the referring bail bond agent, the transfer fee charged, the total premium charged, the total amount collected and the remaining balance owed. The Delaware licensed agent shall be responsible to assure compliance with all provisions of this subchapter with respect to the bond including but not limited to, the charging and collection of the appropriate premiums filed with and approved by the Department.

~~(a) Each insurer appointing a bail agent shall file an appointment with the Department and pay the same appointment fee as for producers under Chapter 17 of this title.~~

~~(b) Each appointment shall remain in effect until the bail agent's license is revoked or terminated, or the appointment is terminated by the insurer.~~

§ 4343. Termination of appointment.

~~(a) An insurer~~ surety may terminate an appointment of a surety bail agent at any time. The ~~insurer~~ surety shall promptly give written notice of termination and the effective date thereof to the Department, on

forms approved by the Department and to the surety bail agent if reasonably possible. The Department may require the ~~insurer~~ surety to provide reasonable proof that the ~~insurer~~ surety has also given such a notice to the surety bail agent unless there are valid reasons why such notice can or should not be given by the ~~insurer~~ surety.

(b) Accompanying each notice of termination given to the Department, the ~~insurer~~ surety shall file a statement of the cause, if any, for the termination. Any information or documents so disclosed to the Department shall be deemed a confidential document, disclosure of which shall be governed by the provisions of § 1716(f) of this title.

(c) No agreement between an ~~insurer~~ surety and a surety bail agent or between an employing bail agent and a licensed bail agent shall affect the Department's termination of the appointment or license if the termination is requested by the insurer or the employing bail agent.

(d) The Department shall notify the courts upon the termination, suspension or revocation of a bail agent's license.

(e) A bail agent's license that is otherwise in good standing with the Department shall be immediately suspended and be subject to revocation by the Department upon notice from a court that the bail agent has been struck from the list of approved bail agents by the court or courts.

§ 4344. Bail agents and designated responsible bail agents: special requirements.

(a) ~~A bail agent shall not concurrently be employed or licensed by more than 1 bail agent or bail agent business entity.~~ A bail bond agent may be concurrently employed or licensed by a surety bail bond agent, and property bail agent or bail bond agent business entities. A bail bond agent shall not concurrently be employed or licensed by two surety bail bond agents, or two property bail bond agents or bail bond agent business entities.

(b) The designated bail agent is responsible for the acts or omissions of the bail agents employed or operating under the designated bail agent's authority only insofar as the bail agent is acting within the scope of that bail agent's employment or authority.

(c) The bail agent shall maintain that bail agent's office with that of the designated bail agent by whom he or she is employed.

(d) The bail agent's license must remain in the custody of the designated bail agent by whom he or she is employed. Upon termination of such employment as a bail agent, the designated bail agent shall give written notice of the reasons thereof to the Department.

(e),(f) [Repealed.]

§ 4345. Registration with the courts.

No bail agent may operate under a license from the Department unless the bail agent has registered with and been approved by the courts of this State according to such rules and procedures as the courts shall have established. Nothing in this subchapter shall limit the authority of the various courts of the State to regulate the manner in which bail agents conduct business within the courts of the State, including, but not limited to, imposing sanctions for violations of any laws or administrative rules established by the courts notwithstanding the fact that such bail agent may be duly licensed by the Department of Insurance.

§ 4346. Bail agent: place of business; display of licenses and fees charged; retention of records at place of business.

(a) Every ~~resident~~ bail agent shall have and maintain in this State a principal place of business accessible to the public, and identified by a sign clearly visible to the public. The address of this principal place of business must appear upon the application for a license and upon the license, when issued, and the licensee shall promptly notify the Department in writing of any change in that address within 30 days of such change. This subsection does not prohibit a licensee from conducting business from a residence in this State, provided that it meets all other requirements applicable to offices of bail agents.

(b) The licenses of the designated bail agent, and of those bail agents employed or authorized by the designated bail agent, and the fees charged for services rendered, must be conspicuously displayed in the principal place of business in a place or area customarily open to the public.

(c) ~~All records of the~~ The designated bail agent and those bail agents employed or authorized to operate under the designated bail agent's auspices shall maintain all of their business records at the principal place of business identified in the license issued by the Department.

~~(d) A nonresident bail agent is not required to maintain a place of business in this State but is otherwise subject to all of the requirements and obligations imposed on resident bail agents under this subchapter with respect to the bail agent's activities in this State.~~

§ 4347. Collections and charges permitted.

(a) Surety ~~B~~ail bond rates are subject to the provisions of Chapter 25 of this title.

(b) It is unlawful for a bail ~~bond~~ agent to execute a bail bond without charging and collecting a premium or other charge therefor, and the premium rate or other charge may not exceed or be less than the premium rate as filed with and approved by the Department. With regard to any surety bail bond in excess of \$1,000, the total filed premium for a surety bail bond shall be at least 5% and not more than 10%. It shall be unlawful for a bail agent to post a surety bail bond without first charging and receiving at least five percent (5%) of the surety bail bond amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

(c) It is unlawful for any surety bail agent to charge any administrative fee, service charge, company or agent fee or the like not filed and approved pursuant to Chapter 25 of this title.

(d) The bond may contain provisions to reimburse the bail agent personally, or permit the bail agent to have a right of action against the defendant or any indemnitor, for actual expenses incurred in good faith, by reason of misrepresentation, fraud or breach by the defendant or any indemnitor of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or bail bond was written. If there is no written agreement, or an incomplete writing, the bail agent may seek enforcement of such legal or equitable rights against the defendant and any of the defendant's indemnitors as may be permitted by law. Such reimbursement or right of action may not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that may be verified by receipt in a total amount of not more than the principal sum of the bond or undertaking, incurred in good faith by the bail agent, its agents, licensees and employees by reason of the defendant's or indemnitor's breach.

(e) Property bail agents, in addition to the requirements set forth in this section, shall not be permitted to issue a bond without first obtaining the approval of their charge or commission schedule from the Department. Likewise, any change or modification to the approved charge or commission shall be submitted to the Department for approval prior to any use thereof. Property bail agents shall be required to maintain a written disclosure statement approved by the Department, of their approved charges or commissions and shall provide a copy of said written disclosure to every prospective client prior to accepting the payment for the bond from the prospective client. It shall be unlawful for any property bail agent to charge any administrative fee, service charge, company or agent fee or the like not filed and approved by the Commissioner.

(f) The total charges or commissions for a cash bail may not be less than twenty percent (20%) or more than thirty percent (30%) of the bail amount posted by the property bail agent. It shall be unlawful for a property bail agent to post a bail without first charging and receiving at least twenty percent (20%) of the cash bail amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

(g) All written contracts and other documents related to a bail bond or cash bail shall be maintained by the bail agent in accordance with the record keeping requirements in Section 4341 of this chapter.

§ 4348. Collateral; limitations on transfer of collateral; fiduciary capacity; requirements for receiving title to real property as collateral; written receipt for collateral.

(a) A bail agent may accept collateral or security in connection with a bail transaction if the collateral or security is reasonable in relation to the face amount of the bond. The bail agent shall not transfer the collateral or security to any person other than a bail agent licensed pursuant to this subchapter or to a surety insurer holding a valid certificate of authority issued by the Department. The collateral shall not be transported or otherwise removed from this State, except for a transfer directly into the custody of a surety insurer holding a valid certificate of authority issued by the Department.

(b) Any person who receives the collateral:

(1) Shall be deemed to hold the collateral in a fiduciary capacity to the same extent as a bail agent; and

(2) Shall retain, return and otherwise possess the collateral in accordance with the provisions of this subchapter.

(c) The collateral or security shall be received by the bail agent in a fiduciary capacity, and, until such time as there is a default of appearance by the defendant and demand for a forfeiture of the bail, the collateral or security shall be kept separate and apart from any other funds or assets of the licensee. Any collateral or security received by the bail agent shall be returned to the person, or that person's assignee or designated representative, who deposited it with the bail agent as soon as the obligation which was secured by the collateral or security, is discharged and all fees owed to the bail agent have been paid. The bail agent or any surety insurer having custody of the collateral or security shall, immediately after the bail agent or surety insurer receives a request for return of the collateral or security from the person who deposited the collateral or security, determine whether the bail agent or surety insurer has received notice that the obligation is discharged. If the collateral or security is deposited to secure the obligation of a bond, it must be returned immediately after receipt of the request for return of the collateral or security and notice of the entry of any order by an authorized official by virtue of which liability under the bond is terminated or upon payment of all fees owed to the bail agent, whichever is later. A certified copy of the order from the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of liability.

(d) When accepting real property as collateral for a bond, it shall be unlawful for a bail agent to require a transfer of title to the real property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post real property on the defendant's behalf, to provide such certifications as may be necessary to establish title and unencumbered value, at the defendant's expense, indemnitor, or other person agreeing to post real property on the defendant's behalf, together with the appropriate security documents that may be necessary to establish a lien interest in the real property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(e) When accepting personal property as collateral for a bond, a bail agent may not require a transfer of title to the personal property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post personal property on the defendant's behalf, at their expense, to provide such financing statements, motor vehicle titles with a lien stamp or the like that may be necessary to establish a lien interest in the personal property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(f) Upon release or exoneration of the bail obligation, the bail agent shall be required to provide such release documents as may be required to discharge any lien of record obtained under subsections (d) and (e) of this section above. The bail agent shall not charge any fee for such service but may require that the defendant, indemnitor, or other person agreeing to post real property on the defendant's behalf pay any direct costs of document preparation and filing fees.

(g) If the amount of any collateral received in a bail transaction exceeds the amount of any bail forfeited by the defendant for whom the collateral was accepted, the bail agent or any surety insurer having custody of the collateral shall, immediately after the bail is forfeited, return to the person who deposited the

collateral the amount by which the collateral exceeds the amount of the bail forfeited. Any collateral returned to a person pursuant to this subsection is subject to a claim for fees, if any, owed to the bail agent returning the collateral.

(h) If a bail agent accepts collateral, that bail agent shall give a written numbered receipt for the collateral. The receipt must include in detail a full account of the collateral received and a copy thereof provided to the principal and any indemnitor, or person or persons pledging the collateral.

(i) When collateral security in excess of \$5,000 cash or its equivalent is received by a surety bail bond agent, the entire amount shall be immediately forwarded to the insurer. Such collateral security may be placed in an interest-bearing account to accrue to the benefit of the person giving the collateral security, and the bail bond agent or insurer may not make any pecuniary gain on the collateral security deposited. Any such account shall be in a depository office of a financial institution (located in this State). The insurer shall be liable for all collateral received. If the bail bond agent fails to return the collateral to the ~~indemnitor~~ person or persons pledging the collateral within 20 days after final termination of liability on the bond, the surety shall be liable for the collateral and shall return the actual collateral to the ~~indemnitor~~ person or persons pledging the collateral or, in the event that the surety cannot locate the collateral, the surety shall pay the ~~indemnitor~~ person or persons pledging the collateral pursuant to the provisions of this section.

(j) When collateral security in cash or its equivalent in any amount is received by a property bail bond agent, the entire amount shall be placed in a fiduciary account with any interest to accrue to the benefit of the person giving the collateral security, and the bail bond agent may not make any pecuniary gain on the collateral security deposited. Any such account shall be in a depository office of a financial institution located in this State.

§ 4349. Notice to law-enforcement; bail enforcement agents.

(a) After a warrant or capias has been issued for a defendant's failure to appear, a bail agent having knowledge of the whereabouts of the defendant shall immediately notify the law-enforcement agency closest to the defendant's location of:

- (1) The identity of the defendant;
- (2) The identity of the bail agent;
- (3) The location of the defendant where law-enforcement officers might be able to obtain custody of the defendant; and
- (4) Whether the bail agent has retained a bail enforcement agent and/or notified a bail enforcement agent of the defendant's location.

(b) A bail agent may employ the services of a bail enforcement agent or similar person under such terms as may be permissible by law, regulation and/or court rule, the costs of which may be assessed to the indemnitor.

§ 4350. Prohibited acts; persons who may not be bail agents.

(a) A bail agent shall not:

- (1) Suggest or advise the employment of or name for employment any particular attorney to represent the defendant.
- (2) Solicit business in or about any place where prisoners are confined or in or about any court.
- (3) Pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission or reduction of the amount of any undertaking or bail bond.
- (4) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except for legal services actually rendered.
- (5) Pay a fee or rebate or give or promise anything of value to the defendant or anyone in the defendant's behalf.
- (6) Participate in the capacity of an attorney at a trial or hearing of a person on whose bond that bail agent is surety, except for the purposes of surrendering the defendant, making motions to set aside

orders of bail forfeitures and motions to exonerate bails and protecting that bail agent's financial interest in such a bond.

(b) The following persons may not be bail agents, and shall not, directly or indirectly, receive any benefits from the execution of any bail bond:

- (1) Jailers;
- (2) Police officers;
- (3) Any person acting in a judicial capacity, including but not limited to justices, judges, alderman, commissioners, clerks, etc.;
- (4) Sheriffs, deputy sheriffs and constables;
- (5) Attorneys or persons employed in an attorney's office;
- (6) Any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners; and
- (7) Prisoners incarcerated in any jail, prison or any other place used for the incarceration of persons.

(c) A bail agent shall not sign or countersign in blank any bond, or give the power of attorney to, or otherwise authorize, anyone to countersign that bail agent's name to bonds unless the person so authorized is a licensed bail agent directly employed by the agent giving the power of attorney.

(d) A bail agent shall not advertise or hold himself or herself out to be a surety insurance company.

(e) No bail agent, bail bond business entity or bail bond property entity shall conduct any business or advertise in this State under any firm or trade name that (i) is false, misleading or deceptive, (ii) implies any connection with any government agency; or (iii) is not registered, licensed, and approved by the Department. Any advertisement shall prominently display the registered name and license number of the bail agent, bail bond business entity or bail bond property entity. No advertisement may use terms such as "discounted" rates. No bail agent may use more than two trade names.

(f) No person shall advertise or represent that it does bail bond business in this State unless the person is licensed under section 4334 of this subchapter.

§ 4351. Justification of suretyship.

A surety bail agent shall justify that bail agent's suretyship by attaching a copy of the power of attorney issued to that surety bail agent by the surety insurer to each bond.

§ 4352. Reporting of actions.

(a) A bail agent, and the bail agent's managing general agent or surety insurer, shall report to the Department in writing:

(1) ~~a~~Any administrative action taken against the bail agent in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(2) Any bankruptcy proceeding, action, or order in this state or another jurisdiction concerning such bail agent or licensed business entity not later than thirty days after initiation of such proceeding, action or order. The written notice required under this subdivision shall be accompanied by all supporting documentation.

~~(b) Within 30 days of the initial pretrial hearing date, a bail agent shall report to the Department any criminal prosecution of the bail agent taken in any jurisdiction.~~ A bail agent and the bail agent's managing general agent or surety insurer shall report to the Commissioner in writing not later than thirty (30) days after receiving notice of or learning that a bail agent has been charged with, arrested for, pleaded guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

§ 4353. Regulations.

The Commissioner may promulgate such regulations as are necessary or proper to carry out the purposes of this subchapter.

§ 4354. Enforcement.

(a) No person shall act in the capacity of a bail agent, advertise or solicit bail bond business, perform any of the functions or duties of a bail agent, collect premiums, charge fees, or otherwise exercise or attempt to exercise powers prescribed for bail agents, unless such person is qualified, licensed and appointed as provided in this subchapter. Any person found guilty of violating this section is guilty of a class F felony.

(b) The Commissioner shall, upon receipt of an information or indictment, immediately temporarily suspend any license or appointment issued under this subchapter when the licensee has been charged with a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country. Such suspension shall continue if the licensee has been found guilty of, or has pleaded guilty or no contest to, the crime, whether or not a judgment or conviction has been entered, during a pending appeal. A person may not effect any additional bail bonds after suspension of his or her license or appointment. However, he or she may discharge any liability on bonds effected prior to such suspension.

(c) The Commissioner shall permanently revoke the license of any bail agent who has pleaded guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state.

(d) The Commissioner may, deny, suspend, revoke, or refuse to renew any license or appointment issued under this subchapter, and it may suspend or revoke the eligibility of any person to hold a license or appointment under this subchapter, for any violation of the laws of this state relating to bail or any violation of the insurance code or if the person at any time fails to meet all of the criteria for issuance or renewal of a license as enumerated in this subchapter.

§ 4354 4355. Enforcement after license lapses or is surrendered.

The Commissioner shall retain authority to enforce the provisions of, and impose any penalty or remedy authorized by, this subchapter and title against any person who is under investigation for, or charged with, a violation of this chapter and title even if, while the investigation or charges are pending, such person's license or registration is surrendered or lapses by operation of law.

§ 4356. Conservation of bail agent business.

(a) If the Commissioner finds that the business of any licensed bail agent in this State has become financially impaired or insolvent, or has been abandoned by the licensee, or has been conducted in such a manner as to require or justify revocation of the licenses of that licensee, and if the Commissioner further finds that the conservation and administration of the business of the licensee would be in the public interest, he or she shall file in the Court of Chancery in the county in which the bail agent business is located a petition for the appointment of the Commissioner as conservator or receiver of such bail agent's business except by leave of the Court.

(b) The petition shall be verified by the Commissioner and shall set forth the facts and circumstances from which the existence of 1 or more of the grounds required under subsection (a) of this section may be determined; such petition may request that the licensee be required to show cause why the petition should not be granted.

(c) A copy of the petition and of the order to show cause, if they are issued, shall be served upon the licensee in the same manner as provided by law of this State for service of other legal process.

(d) Upon the filing of a petition and pending a hearing upon the order to show cause, the Court may, upon good cause shown and without notice to the other party, appoint the Commissioner as temporary conservator or receiver of the bail agent's business.

(e) The Commissioner shall, as conservator or receiver, be authorized and empowered to conduct and administer the affairs of the bail agent business in order to expeditiously terminate such business and, to the extent reasonably possible, to provide services and an accounting for funds to all persons previously insured or doing business with the bail agent, and to insurers who have previously been doing business through such bail agent. Subject to the Court's order, the Commissioner shall have the power to collect funds owed to the bail agent on account of insurance or other bail business transacted by him or her, and to account for and make payment of those funds to such persons as are entitled to them.

(f) The Commissioner may delegate the actual conduct and administration of the business of the bail agent and no charges for services so rendered shall be made against the funds or assets of the bail agent except by leave of the Court.

(g) Except as expressly herein provided, receivership or conservatorship shall be subject to the applicable laws of this State and to the order of any court of competent jurisdiction.

Section 2. This Act shall take effect on January 1, 2014.

Approved August 27, 2013