

CHAPTER 457
FORMERLY
SENATE BILL NO. 246
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PRIVATE INVESTIGATORS, PRIVATE SECURITY AGENCIES AND BAIL ENFORCEMENT AGENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Section 1302(7), Title 24 of the Delaware Code by deleting the phrase “Detective Licensing Unit” and inserting in lieu thereof the phrase “Professional Licensing Section”.

Section 2. Amend § 1304(a), Title 24 of the Delaware Code by deleting the phrase “Detective Licensing Unit” as it appears before the phrase “, Division of State Police” and after the phrase, “also referred to as the”, and insert the phrase “Professional Licensing Section” in lieu thereof.

Section 3. Amend § 1329, Title 24 of the Delaware Code by deleting the phrase “Detective Licensing Unit” “after the phrase ‘a license from the’ and before “, Division of State Police”, and inserting in lieu thereof “Professional Licensing Section”.

Section 4. Amend Title 24, Chapter 55 of the Delaware Code by deleting § 5502 through § 5505 in their entirety and inserting in lieu thereof the following:

“§ 5502. Definitions.

(a) "Bail enforcement agent (BEA)" as used within this chapter, shall mean any person or cooperative of persons, resident or nonresident, whose services or actions are performed for the purpose of capturing a fugitive, and including, but not limited to, any person who engages in the apprehension and return of persons who are released on bail and who have failed to appear at any stage of the proceedings to answer the charge before any state or federal court.

(b) “Bail enforcement board (Board)” means the Delaware Board of Examiners of Bail Enforcement Agents.

(c) “Bail enforcement agent association” shall mean any organization or entity that represents the BEA’s in the state.

(d) “Bail bondsmen association” shall mean any organization or entity that represents the bail bondsmen in the state.

(e) “Bail bondsmen” shall mean the person or persons licensed by the Department of Insurance as a bail bonding agent.

(f) “Director” means the officer in charge of the Professional Licensing Section of the Division of State Police.

§ 5503. Board of Examiners of Bail Enforcement Agents.

(a) Creation of the Board. – The Delaware Board of Examiners of Bail Enforcement Agents is created for the protection of the general public and to carry out the functions and duties conferred on it by this chapter.

(b) All legal process and all documents required by law to be serviced or filed with the Board shall be served or filed with the Chairperson at the designated office herein also referred to as the Professional Licensing Section, Division of State Police. All official records of the Board or affidavits by the Chairperson as to the content of such records shall be prima facie evidence of all matters required to be kept by the Board.

(c) The Board will adhere to the Administrative Procedures Act [Chapter 101 of Title 29].

(d) The Board shall:

(1) Investigate alleged violations of the provision of this chapter and of any rules and regulations adopted by the Board;

(2) Promulgate all rules and regulations necessary in carrying out the provisions of this chapter; and

(3) Establish and enforce standards governing the safety and conduct of persons licensed under this chapter.

§ 5504. Board membership and Authority.

(a) The Board shall be composed of 9 members who shall be citizens of the State and shall be appointed by the Secretary of Safety and Homeland Security:

(1) The Superintendent of the Division of State Police or a designated representative, who shall be appointed by the Secretary of Safety and Homeland Security as Chairperson of the Board. The Chairperson shall serve on the Board at the pleasure of the Secretary.

(2) A representative of the Delaware Police Chiefs Council;

(3) The Insurance Commissioner or a designated representative;

(4) Two public members, one of who is an attorney admitted to the Delaware Bar;

(5) Two members who have been engaged as a bail enforcement agent for a period of 5 consecutive years.

(6) Two members who have been engaged as a bail bondsmen for a period of 5 consecutive years.

(b) The public members appointed to the Board shall serve 2-year terms and the professional members shall serve 3-year terms. Members shall retain their appointment until such time as their successor is appointed or they are reappointed.

(c) A member may proxy no more than twice in a calendar year, and must provide the individual's name in advance of the meeting to the Chairperson. A proxy, under this subsection, shall have the same authority as the Board member. There must be a quorum of the Board in order to transact business. A simple majority of the total number of Board members must be present to constitute a quorum. Actions by the Board shall be by a majority of those present at Board meetings where a quorum has been established. All voting shall be done in person and at regular or special meetings of the Board.

(d) The Board shall meet quarterly or at such times to be decided by the majority of the Board. A majority of the Board constitutes a quorum to transact business.

(e) The Board shall, upon approval by the Secretary of Safety and Homeland Security, promulgate rules and regulations necessary in carrying out the provisions of this chapter, and shall establish such other general qualifications for licensure as the Board deems necessary. The Board shall also have the power to suspend, revoke or place on probation any person required to be licensed under this chapter who violates any provisions of this chapter and/or who violates any rules/and/or regulations promulgated by the Board. The Board may suspend, revoke, place on probation, fine any applicant who has committed any act which could result in a felony conviction, or has committed any act that could result in a misdemeanor conviction which involves moral turpitude or a drug offense; or has practiced fraud, deceit or misrepresentation; or has made a material misstatement in any application or renewal for a license.

(f) It is grounds for removal from the Board if a member:

(1) Does not maintain, during the service on the Board, the qualifications required by subsection (a)(5)(6), of this section;

(2) Does not attend at least one-half of the regularly scheduled meetings, held by the Board, in a calendar year, excluding meetings held when the person was not a member of the Board; or

(3) Is unable to discharge the members' duties for a substantial part of the term of which the member was appointed because of illness or disability.

(g) If the Director has knowledge that a potential ground for removal exists, the Director shall notify the Chairperson of the Board of the ground.

(h) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

§ 5505. Emergency suspension.

(a) The Director shall be granted the power to impose an emergency suspension on any person licensed under this chapter if, in the opinion of the Director, that failure to take such action could jeopardize the public's safety and welfare.

(b) Any person whose license is suspended by the Director, under subsection (a) of this section shall be granted a full hearing, by the Board, within 10 days from the date that the request for a hearing is received by the Director, provided that the violating party request such a hearing, in writing, to the Director within 5 days of the suspension. With the consent of the person requesting a hearing, the hearing may be schedule at the next quarterly meeting of the Board.

§ 5506. Prohibited conduct.

No person, other than a "law-enforcement officer" as defined by § 222 of Title 11 or an employee of any state court acting at the direction of any judge, commissioner or master of any state court, shall apprehend or detain a suspected fugitive on behalf of another person, including a principal on a bond, who has been released on bail as required by the terms of a bond or the bond has been revoked by court order, unless that person is licensed by the provisions of this chapter and its rules and regulations.

§ 5507 Licensing.

(a) The promulgated rules and regulations shall implement the provisions of this chapter regarding the licensure and registration of bail enforcement agents, which may include the term of a license or registration and the qualifications of a licensee, and may charge a fee not to exceed \$500 for each application for licensure and each renewal of an existing license.

(b) The Board shall determine all licensing fees to be assessed under this chapter, including application and renewal fees not to exceed the maximum fee permitted in subsection (a) of this section, except as otherwise set forth in this chapter. All fees and fines collected shall be deposited into the Bail Enforcement Regulatory Fund, which fund shall be a revolving fund and moneys into the fund shall not revert to the State General Fund. The funds shall be used to defray all expenses incurred in its administration of this chapter, including, but not limited to, background investigations, criminal history investigations and fingerprinting of an applicant and any investigation of any charge made against a licensee.

(c) No person shall be issued a license pursuant to this chapter unless that person submits their name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and such other information as may be necessary to obtain a report of the applicant's entire criminal history record from the State Bureau of Identification and a report of the applicants entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544.

(d) An applicant, to be licensed under this Chapter as a Bail Enforcement Agent, must meet and maintain the following requirements:

- (1) Must be at least 21 years of age;
- (2) Must not have been convicted of any felony;
- (3) Must not have been convicted of any misdemeanor involving moral turpitude or any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Professional Licensing Section;
- (4) Must not have been convicted of any misdemeanor involving the act of theft within the last seven (7) years;
- (5) Must not have been convicted of any misdemeanor involving drug offenses within the last seven (7) years;
- (6) Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday;
- (7) Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: offensive touching or assault III;
- (8) Must not have been convicted of any offense involving the impersonation of a police officer or a person of trust as defined in Title 11;

(9) Must not have been convicted of any criminal offense involving organized gang activity as defined in Title 11;

(10) If served in the armed forces, must not have received a dishonorable discharge;

(11) Must not be a member or employee of any law enforcement organization, as defined by the Council of Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction;

(12) Must meet and maintain the qualifications set and approved by the Board pursuant to this chapter and the rules and regulations as promulgated by the Board and approved by the Secretary of Safety and Homeland Security.

(e) Any person whose license has been suspended, revoked, denied or has been imposed a civil penalty, pursuant to Section 5515 of this chapter, is entitled to a hearing before the Board.

(f) The Board may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any individual pursuant to this chapter.

(g) An applicant seeking renewal of their license, under this Chapter as a Bail Enforcement Agent, must meet and maintain the requirements pursuant to Section 5507 (d) of this chapter.

§ 5508 Change of address.

Notification shall be made to the Professional Licensing Section within 14 days after the change of any contact information, including but not limited to, address, phone number (home and cell), and e-mail address of any individual licensed under this chapter. Failure to do so may result in the suspension or revocation of a license.

§ 5509 Identification card, license, and badge.

(a) Anyone required to be licensed under this chapter shall be issued, by the Professional Licensing Section, an identification card, license, and badge which shall expire and be renewable on the fourth anniversary date of the birth of the applicant next following the date of its issuance, unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every fourth year.

(b) BEA licenses issued prior to July 1, 2010 shall continue in force until the expiration thereof, unless there has been a violation of section 5507 of this chapter.

§ 5510 Possession of identification card and badge.

Any person who has been issued an identification card and badge by the Professional Licensing Section shall be required to have such card and badge in their possession while in the performance of the person's duties.

§ 5511. Notification of arrest.

Anyone licensed under this chapter shall, excluding weekends and state holidays, notify the Director within 5 days of any arrest which could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of a license.

§ 5512. Surrender of expired, revoked or suspended identification cards, licenses and badges; penalty.

Any person to whom an identification card, license and badge may be issued in accordance with this chapter shall surrender such items and all duplicate copies thereof, which have expired or have been revoked or suspended to the Professional Licensing Section of the Delaware State Police.

§ 5513 Jurisdiction.

The Superior Court shall have jurisdiction over violations under this chapter.

§ 5514. Violation of chapter as ground for revocation of identification card, license and badge.

A violation of this chapter shall be cause for revocation of any identification card, license and badge issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony.

§ 5515 Penalties.

(a) The Board shall have the power to impose a civil penalty upon any person required to be licensed under this chapter up to \$200, per day, for operating without a valid license.

(b) Anyone performing the duties of a BEA pursuant to Section 5502, of this Chapter, who is not duly licensed under this chapter shall be guilty of a class F felony.”

Approved July 30, 2010