



SPONSOR: Sen. Mantzavinos & Rep. Bush
Sen. Gay; Rep. Brady

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 102

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:

1 Section 1. Amend § 4332, Title 18 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 4332. Definitions.

4 (2) "Bail agent business ~~Business~~ entity" shall mean a corporation, association, partnership, limited liability
5 company, limited liability ~~partnership~~ partnership, or other legal entity that advertises or acts as a bail agent.

6 (3) "Bail Funder" means, unless expressly exempted pursuant to this subchapter, any person who provides or loans
7 the funds to property bail agents or bail agent business entities that are used or may be used for purposes of furnishing
8 property bail in court proceedings, regardless of whether the provision of funds is classified as a personal or business loan
9 (or whether such loan is secured or unsecured) or gift.

10 (13) "Property bail agent" means any person who pledges property bail as security or surety for a bail bond in
11 connection with a judicial proceeding and receives or is promised therefor money or other things of value. All of the
12 following are deemed property bail agents and are subject to the provisions of this subchapter:

13 a. Any person who charges or accepts a fee or anything of value for or makes a business of furnishing
14 property bail in any court ~~proceeding~~, proceeding.

15 b. Any person ~~or~~ who furnishes property bail in 4 or more court cases in any 1 year whether for
16 compensation or ~~otherwise~~ otherwise.

17 c. Any person who is acting as a bail funder.

18 ~~shall be deemed a property bail agent and shall be subject to the provisions of this subchapter.~~

19 Section 2. Amend § 4333, Title 18 of the Delaware Code by making deletions as shown by strike through and
20 insertions as shown by underline as follows:

21 § 4333. Application for license as a bail agent and licensure.

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

(3) Has not committed any of the following acts:

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

(d)(1) A person applying for, or having been granted, a bail agent license, shall disclose to the Commissioner the identity of each person that will act as a bail funder for such applicant or licensee and each person having or seeking to acquire a 10% or greater financial interest ~~in~~ in either of the following:

a. The bail agent's ~~business;~~ business.

b. Any 1 or more bail bonds pledged by or on behalf of the applicant or licensee.

~~(2) Before any person may acquire or maintain a 10% or greater financial interest in:~~ (2) A person must be licensed as a bail agent under this section before any such person may act as a bail funder under this subchapter or before any person may acquire or maintain a 10% or greater financial interest in either of the following:

a. A bail agent's ~~business;~~ business.

b. ~~any~~ Any 1 or more bail ~~bonds;~~ bonds.

(3) No licensee or applicant for a license shall accept funds from a bail funder unless such bail funder is licensed as a bail agent or bail agent business entity under this subchapter.

~~(3)~~ (4) No licensee or applicant for a license or licensee shall allow a person to acquire or maintain a 10% or greater financial interest in: in a bail agent's business or any 1 or more bail bonds,

~~a. A bail agent's business;~~ or

~~b. Any 1 or more bail bonds;~~

unless the person seeking to acquire such interest is licensed as a bail agent under this subchapter.

(5) For purposes of this section, "financial interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of an ownership or interest in a business entity. For the avoidance of doubt, a person has a "financial interest" in a bail agent's business if either of the following apply:

a. Such person has a legal or equitable ownership interest in such bail agent's business of more than 10%.

b. Such person is a creditor of such bail agent's business in an amount equal to 10% or more of the debt of that business.

(6) The provisions in this subchapter requiring the licensure of bail funders as property bail agents shall not apply to banks and financial institutions supervised and regulated under Title 5 of the Delaware Code or by a banking regulatory agency of the United States.

~~(f) Each application shall further contain, at the applicant's expense, a 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 purposes of this subsection.~~

(f)(1) Any person applying for a license under this chapter shall be required to submit fingerprints and other necessary information for the purpose of obtaining the following:

(a) A report of the person's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(b) A report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534).

(2) The State Bureau of Identification shall be the intermediary for purposes of this subsection, and the Department shall be the screening point for the receipt of said federal criminal history records. All information obtained pursuant to this subsection section shall be forwarded by the State Bureau of Identification to the Department. All costs associated with obtaining the criminal history reports required by this subsection shall be borne by the applicant, and all criminal history reports shall be dated within 45 days of the application.

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

(k) All provisions in this subchapter applicable to bail agents shall apply equally to bail funders except as the Commissioner may provide by rule or regulation.

Section 3. Amend § 4333B, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4333B. Additional application requirements for property bail agents.

(b) A property bail agent and bail agent business entity shall have a continuing duty: duty to all of the following:

(1) To advise the Commissioner in writing under oath of any material change in such property bail agent's or bail agent business entity's assets or liabilities affecting such property bail agent's or bail agent business entity's responsibility as a property bail agent or bail agent business entity; ~~and~~

(2) At any time, upon request of the Commissioner, to furnish the Commissioner with a statement under oath of such property bail agent's or bail agent business entity's assets and liabilities, including all bail bonds on which such property bail agent or bail agent business entity is obligated. The Commissioner may request, and the property bail agent or bail agent or business entity shall provide, financial statements and balance sheets, in the form requested by the Commissioner, bank statements and any other information requested by the Commissioner to allow the Commissioner to review the business operations of the bail agent or bail agent business entity.

Section 4. Amend § 4334, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4334. Application for license as a bail agent business entity.

(a) A ~~business entity advertising and acting as a bail agent~~ bail agent business entity is required to obtain a bail ~~producer agent~~ agent business entity insurance license. All surety bail bond contract transactions under the bail agent business entity license must be completed by a licensed bail agent of this State. Nonlicensed 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~~ customers, or other persons, but only under the supervision of a licensed agent who shall be responsible for any noncompliance with this subchapter by the nonlicensed individual.

(b) Application for a bail agent 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:~~ make a finding as to both of the following:

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

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

(d) If the license of a bail agent business entity's designated bail agent is no longer active, whether due to expiration, suspension, revocation, or otherwise, the license of such bail agent business entity shall be immediately suspended until such time as a licensed bail agent in good standing is designated as such bail agent business entity's designated agent. In addition, a bail agent business entity's designated bail agent shall be subject to the same penalties as

112 the bail agent business entity for the bail agent business entity's failure to comply with the laws, rules, and regulations of
113 this State.

114 Section 5. Amend § 4335, Title 18 of the Delaware Code by making deletions as shown by strike through and
115 insertions as shown by underline as follows:

116 § 4335. License renewal.

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

122 Section 6. Amend Section 4336(a), Title 18 of the Delaware Code by making deletions as shown by strike through
123 and insertions as shown by underline as follows:

124 § 4336. Bonds.

125 (a) At the time of the application for license as a bail agent, the applicant shall file with the Department a bond
126 executed and issued by a surety insurer authorized to transact business in the State in the minimum amount of ~~\$20,000~~
127 \$50,000, which bond shall secure the faithful performance of the applicant's duties as a bail agent. A bail agent license
128 shall be automatically suspended if the bond is not in force or is otherwise ~~if the security referred to in subsection (c) of this~~
129 ~~section is~~ impaired or unavailable to the Department. Current licensees who either do not currently have a bond filed with
130 the Department or were required to provide a bond in an amount less than \$50,000 at the time of their license applications
131 under prior law shall file with the Department a new bond in the minimum amount of \$50,000 within one year of the
132 effective date of the increased bond requirement.

133 Section 7. Amend § 4338, Title 18 of the Delaware Code by making deletions as shown by strike through and
134 insertions as shown by underline as follows:

135 § 4338. Issuance of license; notice of refusal to issue license; fees not refundable.

136 (d) If the applicant for a bail agent license fails to meet the requirements of this subchapter or any applicable
137 regulation, the Department shall refuse to issue the license and shall notify the applicant of such refusal stating the grounds
138 for the refusal. ~~The notice of refusal shall constitute an order of the Commissioner as provided in § 323 of this title. The~~
139 applicant may make written demand upon the Commissioner within 10 days for a hearing before the Commissioner to
140 determine the reasonableness of the Commissioner's action. The hearing shall be held pursuant to the Administrative

Procedures Act, Chapter 101 of Title 29, and such additional promulgated regulations as may be published by the Commissioner.

(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)~~ 4354(d) of this title.

Section 8. Amend § 4341, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4341. Records.

(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, the name of the bail funder, if applicable, the amount of the funds provided, the bank account information from which the funds were obtained, or a notation that the funds were provided in cash, disposition of bond, ~~and date of disposition, and, if applicable, date that funds were repaid to the bail funder and the method of repayment of those funds, including relevant bank account information.~~

(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~~ 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.

(4) With respect to those licensees who are acting as bail funders, a daily register which must include all of the following:

a. Information relating to each bond for which funds were provided and the date the funds were provided to the bail agent or business entity;

b. The bail agent or business entity to whom the funds were provided;

c. The case docket number for the bond;

d. The amount of funds provided and the method by which they were provided;

e. The charge applied to such loan; and

f. The date the loan or funds were repaid and the method of repayment of those funds including relevant bank account information.

Section 9. Amend § 4344, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(a) A bail ~~bond~~ agent may be concurrently employed or licensed by a 1 surety bail bond agent, and either 1 property bail agent or 1 bail ~~bond~~-agent business ~~entities~~ entity. A bail ~~bond~~ agent shall not concurrently be employed or licensed by 2 more than 1 surety bail ~~bond~~ agents, or 2 more than 1 property bail ~~bond~~ agents or bail ~~bond~~ agent business ~~entities~~ entity.

Section 10. Amend § 4350, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(e) No bail ~~agent, or bail bond agent~~ business entity ~~or bail bond property entity shall~~ may conduct any business or advertise in this State under any firm or trade name that:

(1) Is false, misleading or deceptive;

(2) Implies any connection with any government agency; or

(3) 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 agent~~ business entity ~~or bail bond property entity~~. No advertisement may use terms such as "discounted" rates. No bail agent may use more than 2 trade names.

Section 11. Amend § 4352, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4352 Reporting of actions; responding to Department inquiries.

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

(1) 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~~ 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 bail agent~~ business entity not later than 30 days after initiation of such proceeding, ~~action~~ action, or order. The written notice required under this subsection shall be accompanied by all supporting documentation.

(c) All persons licensed under this subchapter shall provide preliminary substantive responses to inquiries from the Department regarding violations of this title or any lawful order, rule, or regulation of the Commissioner, within 21 days of such inquiry. All responses required under this subsection shall be in writing and shall be accompanied by all supporting documentation. Failure to timely respond to Department inquiries shall result in a penalty pursuant to § 4354(d) of this title.

Section 12. Amend § 4354, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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 the criteria for issuance or renewal of a license as enumerated in this subchapter. A person whose license has been revoked or suspended on 2 occasions shall not again be licensed under this title. In addition to or in lieu of any applicable denial, suspension, revocation, or refusal to renew any license, a person may, after hearing, be subject to a fine of not less than \$200 and not more than \$20,000 for each such violation. The Commissioner's order shall specify the date upon which such fine shall be paid and shall revoke the license of any licensee failing to comply with such order. The date on which payment is due may not be less than 30 days following the date of the Commissioner's order unless otherwise specified in the order. The Commissioner may institute a civil action to recover fines so levied and must pay over all fines paid and recovered to the State Treasurer.

SYNOPSIS

This bill clarifies the original intent of House Bill No. 151 of the 147th General Assembly, which substantially revised the law relating to bail agent licensure and oversight, that individuals or businesses that loan or otherwise provide funds to bail agents for purposes of furnishing bail ("bail funders") are themselves required to be licensed as bail agents. This clarification is necessary in light of certain members of the bail industry's attempts to circumvent the requirements of HB 151, as reflected in the Superior Court opinion issued in the matter of Preferred Financial Services, Inc. v. A&R Bail Bonds LLC, et al., 2019 WL 315331 (Del. Super. January 23, 2019), aff'd 2019 WL 4042324 (Del. August 28, 2019). The bill also creates a standard term ("bail agent business entity") to refer to business entities that advertise and act as bail agents and standardizes the use of the phrase throughout the subchapter. Section 2 provides a definition of "financial interest" and revises the provision regarding background check requirements to permit applicants to submit federal background check requests electronically through SBI. Section 3 of this bill clarifies that the duties of bail agents as set

forth in Section 4333B(b) apply both to individual property bail agents and business entity licensees and also grants the Commissioner the authority to request from licensees financial statements and balance sheets in a form required by the Commissioner, bank statements, and other information deemed necessary by the Commissioner in her review of the business operations of licensees under this Chapter. Section 4 of this bill requires the automatic suspension of a bail entity's license if such entity's designated responsible individual licensee is no longer in good standing and dictates that a designated responsible individual licensee is responsible for the business entity's failure to comply with the relevant insurance laws. Sections 5 and 7 of this bill correct a typographical error in the original statute. Section 6 of this bill increases the amount of the bond that bail agents are required to file with the Department. Section 7 also sets forth the procedure for requesting a hearing in connection with a license application denial, which is consistent with the procedures set forth in Chapter 17 of the Insurance Code for producers. Section 8 of this bill includes additional record maintenance requirements in connection with the use of bail funders. Sections 9 and 10 make changes for technical and consistency purposes. Section 11 of this bill requires bail agents to substantively respond to Department inquiries within a reasonable timeframe, which is consistent with the requirements under Title 18's Unfair Trade Practices Act (Ch. 23). Section 12 of this bill adds language regarding fines that may be imposed upon bail agents in lieu of or in addition to other penalties that may be imposed for violations of the laws of this State.

This bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Mantzavinos