

AN ACT

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

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

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

"59A-51-2. DEFINITIONS.--As used in the Bail Bondsmen Licensing Law:

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

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

C. "limited surety agent" means any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and receives or is promised money or other things of value therefor;

D. "property bondsman" means any person who pledges United States currency, United States postal money orders or cashier's checks or other property 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; and

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

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

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

- A. be an individual not less than eighteen years of age;
- B. be a citizen of the United States;
- C. be a high school graduate or have passed a high school equivalency examination;
- D. not be a law enforcement, adjudication, jail, court or prosecution official or an employee thereof or an attorney, official authorized to admit to bail or state or

county officer;

E. if for license as bondsman, pass a written examination testing the applicant's knowledge and competence to engage in the bail bondsman business;

F. be of good personal and business reputation;

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

H. if to act as a limited surety agent, be appointed by an authorized surety insurer; and

I. if for license as a solicitor, have been so appointed by a licensed bail bondsman subject to issuance of the solicitor license."

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

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

A. In order to be eligible to take the examination required to be licensed as a bail bondsman or solicitor, the applicant shall complete pre-licensing requirements as prescribed by rule. Pre-licensing requirements shall include formal classroom education, the form and content of which shall be subject to approval by the superintendent. In addition, the applicant shall complete thirty hours of on-the-job training under the direct supervision of a licensed bail

bondsman who shall certify in writing that the applicant has been taught the subjects pertinent to the duties and responsibilities of a bail bondsman, including ethics and all laws and rules related to the bail bond business, and that the applicant is prepared to take the examination.

B. Prior to renewal of a bail bondsman's or solicitor's license, a licensee shall complete annually continuing education requirements as prescribed by rule.

C. It is a violation of the New Mexico Insurance Code for a person to falsely represent to the superintendent that the education requirements of this section have been complied with or to fail to register with the superintendent.

D. The superintendent shall adopt and promulgate such rules as are necessary for the effective administration of this section."

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

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

A. An individual desiring to be licensed as bail bondsman or solicitor under the Bail Bondsmen Licensing Law shall file with the superintendent a written application on a form as prescribed and furnished by the superintendent, together with an application for a qualifying examination.

B. With application for license to act as property bondsman the applicant shall file with the superintendent a detailed financial statement under oath.

C. Application for a solicitor's license must be endorsed by the appointing bail bondsman, who shall therein be obligated to supervise the solicitor's activities in the bondsman's behalf.

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

E. As part of an application for a license, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident licensee. The appointment is irrevocable and continues for so long as an action involving the nonresident licensee could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the office of superintendent of insurance during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service, the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the

nonresident licensee at the nonresident licensee's last address of record with the superintendent. Process served and copy forward as so provided constitutes personal service upon the nonresident licensee.

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

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

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

A. Prior to the issuance of a license to act as property bondsman, the applicant therefor shall deposit with the superintendent a surety bond in favor of the superintendent, or in lieu thereof a certificate of deposit, securities or a letter of credit issued by an institution, acceptable to the superintendent, and which letter is irrevocable for the term of the license, in a total aggregate

amount of not less than twenty-five thousand dollars (\$25,000), conditioned to pay the actual damages resulting to the state or to any member of the public from any violation by the property bondsman of the provisions of the Bail Bondsmen Licensing Law or any other insurance laws. Surety bonds shall be executed by a surety insurer authorized to do business in this state.

B. The bond or deposit shall be maintained for the duration of the license, or, in the case of a surety bond, until the surety is released from liability by the superintendent or until the bond is canceled by the surety. In addition, the bond or deposit shall be maintained until all bonds that have been posted with all courts become exonerated. Without prejudice to any liability incurred prior to expiration or cancellation, the bond may expire, or the surety may cancel a bond by giving written notice to the superintendent at least thirty days prior to the effective date of the cancellation. The licensee shall immediately replace a bond expired or so canceled or make the required deposit in lieu thereof."

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

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

A. A bail bondsman or solicitor shall not:

(1) suggest or advise the employment of or name for employment any particular attorney to represent the bail bondsman's or solicitor's principal;

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

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

(4) pay a fee or rebate or offer a reduction in rates, charges or premiums or give or promise anything of value to the principal or anyone on behalf of the principal;

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

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

(7) charge or accept anything of value except the premium on the bond and any extraterritorial

recovery expenses, but the bondsman may accept collateral security or other indemnity if:

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

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

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

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

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

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

C. Law enforcement, adjudication and prosecution

officials and their employees, attorneys-at-law, officials authorized to admit to bail and state and county officers shall not directly or indirectly receive any benefits from the execution of any bail bond.

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

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

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

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

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

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

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

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

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

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

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

(5) fraudulent or dishonest practices in the conduct of business under the license;

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

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

(8) failure or refusal, upon demand, to pay over to any insurer that the licensee represented, any money coming into the licensee's hands belonging to the insurer;

(9) failure to preserve without use and

retain separately or to return collateral taken as security on any bond to the principal, indemnitor or depositor of collateral when the principal, indemnitor or depositor is entitled to such collateral;

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

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

B. When, in the judgment of the superintendent, the licensee in the conduct of affairs under the license has demonstrated incompetency, untrustworthiness, conduct or practices rendering the licensee unfit to engage in the bail bond business, or making the licensee's continuance in such business detrimental to the public interest, or that the licensee is no longer in good faith engaged in the bail bond business, or that the licensee is guilty of rebating, or offering to rebate the licensee's commissions in the case of limited surety agents or premiums in the case of property bondsmen, and for such reasons is found by the superintendent to be a source of detriment, injury or loss to the public, the superintendent shall revoke or suspend the license.

C. In case of the suspension or revocation of

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

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

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

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

A. The superintendent may, in the superintendent's discretion, in lieu of license suspension, revocation or refusal, and except on a second offense, impose upon the licensee an administrative penalty of one hundred dollars (\$100), or, if the superintendent has found wilful misconduct or wilful violation on the part of the licensee, an administrative penalty not to exceed one thousand dollars (\$1,000).

B. The superintendent may allow the licensee a

reasonable period, not to exceed thirty days, within which to pay to superintendent the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the superintendent within the period so allowed, the license of the licensee shall stand suspended or revoked, or continuation refused, as the case may be, upon expiration of such period and without any further proceedings."

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

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

SECTION 10. TEMPORARY PROVISION.--The supreme court shall by rule determine the conditions under which a bail bondsman or solicitor may appear in court without the assistance of an attorney and without constituting the practice of law.

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