

**ALEC EXPOSED**

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

**ALEC's Corporate Board**  
--in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

& MEETINGS

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → [Model Legislation](#) → Public Safety and Elections

**Bail Agent Education and Licensing Act**

Did you know the NRA--the National Rifle Association--was the corporate co-chair in 2011?

**Summary**

This Act would establish a state bail bond regulatory board to monitor and license bail bondsmen. The Act would also set educational standards for licensed bail bondsmen and establish penalties and conditions for license revocation.

**Model Legislation**

{Title, enacting clause, etc.}

**Section 1. {Title}** This Act may be cited as the Bail Agent Education and Licensing Act.

**Section 2. {Definitions.}** As used in this Act:

- (A) "Applicant" means any person applying for a license hereunder.
- (B) "Bail bond" or "bond" means cash deposit and any similar deposit or written undertaking to ensure appearance.
- (C) "Bail bondsman" means any person who, for compensation, or any type of remuneration:
  - (1) deposits or advances cash, check, draft, instrument, or any other type of security; or
  - (2) executes any bond as a surety or cosurety for another to ensure appearance before a court or other authorized body in any criminal proceeding.
- (D) "Board" means the State Bail Bond Regulatory Board.
- (E) "Commissioner" means the commissioner of the state department of labor and standards.
- (F) "Consumer" means any person other than one licensed under this Act who seeks or acquires by purchase a bail bond.
- (G) "Department" means the state department of labor and standards.
- (H) "Licensee" means any person holding a license under this Act.
- (I) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.
- (J) "Principal office" means the place of business of the licensee, unless the licensee has more than one office. In that event, the licensee shall in writing designate to the department one of its offices as its principal office.
- (K) "Property" means any property, tangible and intangible, real, personal, or mixed.
- (L) "Sheriff," unless otherwise specified, means the sheriff of the county in which the licensee's principal office is located.

**Section 3. {The board.}**

- (A) There is hereby created the State Bail Bond Regulatory Board.
- (B) The board shall consist of nine individuals, of whom:
  - (1) three shall be members of the general public, who at the time of their appointment and prior thereto have not been bail bondsmen, agents or employees of a bail bondsman, elected public officials, or employees of a government entity in the preceding four-year period;
  - (2) three shall be licensed bail bondsmen, whose names shall be recommended by the Professional Bail Bondsmen of the state, but the governor shall not be bound by the names recommended;
  - (3) one shall be a public member of the criminal justice division of the governor's office;

(4) one shall be a member of the Sheriff's Association of the state who at the time of his appointment is serving a term as sheriff of any county in the state. The Sheriff's Association may recommend one of its members to the governor for appointment, but the governor shall not be bound by that recommendation;

(5) one shall be a member of the District and County Attorney's Association, who at the time of his appointment is serving as a district or county attorney in any county in the state. The District and County Attorney's Association may recommend one of its members to the governor for appointment, but the governor shall not be bound by that recommendation.

(C) The governor shall appoint all members of the board with the advice and consent of the Senate.

(D) Board members shall serve staggered terms of six years, the terms ending on February 1 of every sixth year, provided, however, that the members of the initial board shall serve terms as follows:

(1) the criminal justice division, the Sheriff's Association of the state and the District and County Attorney's Association members for the initial two years;

(2) the bail bondsmen for the initial four years;

(3) the member of the general public for the initial six years.

(E) Members of the board shall receive no compensation for serving thereon nor any remuneration for expenses incurred in the performance of their duties under this Act; provided, however, that board members shall be reimbursed per state per diem codes for travel and lodging expenses incurred in attending board meetings.

#### **Section 4. {Board-powers and duties.}**

(A) The board shall elect one of its members to act as chairperson.

(B) The board shall meet at least once every calendar quarter and shall meet at the call of its chairperson or of the commissioner.

(C) The board shall have the authority to conduct hearings and investigations and promulgate rules and regulations respecting the issuance, renewal, refusal, suspension, or revocation of licenses to bondsmen within the provisions of this Act.

(D) The board shall establish reasonable rules and regulations for the administration of its responsibilities under this Act.

(E) The board shall make its decisions by the majority vote of its members present, and seven members present are required to constitute a quorum.

(F) The board may set a bond fee, in an amount not to exceed \$10 per defendant charged with an offense other than a misdemeanor punishable by fine only. Such fee shall be collected by the sheriff and distributed as determined by state law.

#### **Section 5. {Commissioner-powers and duties.}**

(A) The commissioner shall administer this Act through the department.

(B) The commissioner shall publish or cause to be published all rules, regulations, and requirements set or determined by the board, and shall enforce them.

(C) The commissioner shall issue and revoke licenses pursuant to the provisions of this Act and the rules, regulations, and requirements set or determined by the board.

(D) The commissioner shall provide the board with the information and staff support from the department as reasonably necessary and requested by the board.

(E) The commissioner shall prescribe application forms for original and renewal licenses consistent with this Act and with the rules, regulations and requirements of the board.

(F) The commissioner shall administer examinations determined necessary by the board under this Act.

(G) The commissioner may employ the personnel necessary to implement this Act.

(H) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(I) The commissioner shall maintain a record of his or her proceedings under this Act.

(J) The commissioner shall publish quarterly a directory of the persons licensed under this Act. The commissioner may sell the directory on payment of a reasonable fee set by the commissioner. The fees collected under this subsection shall be appropriated to the department for use in the administration of this Act.

#### **Section 6. {License requirements; exemption; eligibility.}**

(A) Except as provided by Subsections (B) and (C) of Section 23 and by Section 23(A) of this Act, a person may not operate as a bail bondsman in this state without a license issued by the department under this Act.

(B) An individual is eligible for a license under this Act if he or she:

(1) is at least 18 years of age; and

- (2) (a) possesses sufficient financial resources to deposit with the department the security required by this Act, or
- (b) has been appointed as an agent for a corporation licensed under this Act; and
- (3) has met the educational requirements of this Act, including but not limited to:
- (a) bail bond laws, board rules and regulations, community relations, agency relationships, fiduciary relationships, civil and criminal procedure, court decorum, judgments, and indemnifications;
- (b) knowledge and professional skill requirements; and
- (4) has not been finally convicted of a felony within the past 10 years.
- (C) A partnership is eligible for license under this Act if:
- (1) each partner is at least 18 years of age; and
- (2) (a) the partnership possesses sufficient financial resources to deposit with the department the security required by this Act; or
- (b) the partnership has been appointed as an agent for a corporation licensed under this Act;
- (3) each partner has met the educational requirements of this Act; and
- (4) the partnership and each partner has complied with the (state's partnership laws); and
- (5) no partner has been finally convicted of a felony within the past 10 years.
- (D) A corporation is eligible for a license under this Act if:
- (1) it is qualified to execute fidelity, guaranty and surety bonds under the state insurance code as amended; and
- (2) the corporation does not act as partner in a partnership that is doing bail bond business in the state.
- (E) No individual shall be eligible for licensing or renewal of license under this Act if:
- (1) the individual has operated previously as a bail bondsman in this State; and
- (2) the individual has ceased operating as a bail bondsman; and
- (3) there exists unsatisfied final judgments for which the individual is liable.
- (F) No partnership shall be eligible for licensing or renewal of license under this Act if:
- (1) a partner of the partnership, or an agent, servant, or employee of the partnership, is an individual ineligible under Section 6(E) of this Act; or
- (2) the partnership:
- (a) has operated previously as a bail bondsman in this State; and
- (b) has ceased operating as a bail bondsman; and
- (c) there exist outstanding final judgments for which the partnership is liable.
- (G) An individual applicant or licensee who was acting as an agent, servant, or employee of a partnership at the time such partnership became ineligible under Section 6(F) of this Act, shall not be deemed ineligible solely by reason of such agency, service, or employment.

**Section 6A. {Employee license; eligibility; application.}**

- (A) To be eligible for a bail bondsman employee license, an individual must meet the requirements set out in Section 6(B) of this Act; except, however, the individual need not qualify under Paragraph 2 of Section 6(b).
- (B) An individual who begins employment with a licensed bail bondsman must file an application with the commissioner for a bail bondsman employee license within 30 days after the day employment begins. The application must state:
- (1) the applicant's name and address;
- (2) the name of the bail bondsman with whom the applicant is employed;
- (3) whether the applicant has been convicted of or is under indictment for any crime;
- (4) whether the applicant has had a license to engage in any occupation, business, or profession revoked or suspended, and the reason for the action;
- (5) whether the applicant has been refused a bail bondsman employee license or any other occupation, business, or professional license in this or any other state;
- (6) the business or occupation engaged in by the applicant for five years immediately preceding the date of application; and
- (7) other relevant information that the commissioner requires.

(C) The application for an employee license shall be accompanied by an annual fee.

### **Section 7. {Bail bondsman license application.}**

(A) An applicant for a bail bondsman's license under this Act must file a written application with the department on a form prescribed by the department, accompanied by:

- (1) the application fee or renewal fee, as determined by the board; and,
- (2) a photograph and a set of fingerprints of the individuals required by this Section to submit fingerprints. The fingerprints shall be taken by a law enforcement officer designated by the department.

(B) If the applicant is an:

- (1) individual, he or she shall comply with Section 7(A)(2) of this Act;
- (2) partnership, each partner shall comply with Section 7(A) (2) of this Act.

(C) The application must show that the applicant meets the requirements established by this Act for a license to operate as a bail bondsman in this state.

(D) The license application must include the following:

- (1) the name and address of the applicant;
- (2) the name under which the bail bond business is to be conducted;
- (3) the address of each location at which the applicant proposes to engage in business as a bail bondsman and the designation required by Section 2(J) of this Act;
- (4) copies of any assumed business or professional name certificates filed pursuant to the Assumed Business or Professional Name Act;
- (5) a statement listing any nonexempt and unencumbered real estate owned by the applicant in this state that the applicant intends to convey in trust to the sheriff for credit to the licensee's security fund, including:
  - (a) a legal description of the property equivalent to the description required to convey the property by general warranty deed;
  - (b) a mortgagee's title policy or a commitment for the issuance of such a policy, in an amount equal to the appraisal filed with the application, with the sheriff as beneficiary, issued by a company authorized to write title insurance in this state;
  - (c) an appraisal not more than 180 days old performed by an appraiser registered in the state and in the closest county thereto;
  - (d) an agreement to insure and keep current the insurance on any improvements on the property against any damage or destruction while the property is in trust; and
  - (e) a statement indicating whether the applicant is married and, if so, a sworn statement from the spouse agreeing to transfer to the sheriff, as part of the trust, any right, title, or interest that the spouse may have in the property.
- (6) a statement indicating the face value of any certificates of deposit that the applicant intends to place on deposit to secure payment of any bond obligations incurred by the applicant if the license is granted;
- (7) a sworn financial statement of the applicant not more than 180 days old (refer to state fraud laws);
- (8) the applicant's date of birth, place of birth, social security number, or federal tax identification number. If the applicant is a partnership, each partner must supply the information required by this Subparagraph along with the partnership's federal tax identification number; and
- (9) the application of an individual, or of the agent of a corporate applicant or licensee, shall be accompanied by letters of recommendation from three persons who have known the applicant for a period of at least three years. Each letter shall recommend the applicant as an individual having a reputation of honesty, truthfulness, fair dealing, and competency, and shall recommend that the license be granted. If the applicant is a partnership, each partner shall submit three such letters.

**Section 8. {Security requirements.}** On notification by the department that the license application has been approved, the applicant shall:

(A) deposit with the sheriff a cashier's check, certificate of deposit, cash, or cash equivalent in an amount of no less than \$50,000; or

(B) execute in trust to the sheriff the real property listed in his application, provided that such real property be appraised at \$50,000, pursuant to Section 7(D)(5) (c) of the Act; or

(C) deposit with the sheriff any combination of items denominated in Subsections (A) and (B) of this section, in the aggregate value of no less than \$50,000.

(D) On notification by the department that the license application has been approved, the sheriff shall accept from the applicant the deposits and executed instruments denominated in subsections (A), (B), and (C) of this Section. Failure to comply with this subsection shall be deemed a knowing or intentional violation of this Act.

**Section 9. {License issuance.}**

(A) The department shall issue a bail bondsman license to an applicant who meets the requirements prescribed by this Act.

(B) A license issued under this Act is valid throughout this state. A license is assignable or transferable only as provided by this Act.

(C) A sheriff from any county within the state shall accept a bond from a bondsman who holds a license under this Act, provided that the sheriff of the county in which the licensee's principal office is located has placed his signature and seal of office upon the bond.

**Section 10. {License renewal, assignability, or transferability.}**

(A) A license issued under this Act is valid for two years unless suspended or revoked. A licensee may renew an unexpired license by paying the renewal fees every two years upon notice by the department. The licensee shall also comply with any other renewal requirements within fifteen days after the department sends the licensee written notice of such requirements. The notices required by this subsection shall be sent to the licensee at his or her principal office, as shown on the books and records of the department, by certified mail with return receipt requested. If the licensee fails to pay the renewal fee or meet the other renewal requirements within 15 days after the department sends the notice required by this Subsection, the license shall expire.

(B) The department shall, upon the request of any person and the payment of any authorized fee, issue a renewal or expiration certificate which is authorized to be recorded in the office of any county clerk. The department shall, upon the request of any person and the payment of any authorized fee, issue a certificate of good standing of a licensee. A licensee is in good standing when he or she holds a license that is not suspended, revoked, or expired. Each renewal certificate shall have the same license number as the original license.

(C) The department shall notify each licensee in writing (by certified mail with return receipt requested at the address of the principal office of the licensee as shown on the books and records of the department) of pending license expiration not later than the 45th day before the date on which the license expires.

(D) The licensee shall update the information provided in the original application as a condition of renewal.

(E) A license may be transferred upon approval by the department. An application for the transfer of a license shall have the same form and content as an original application for a license. Upon the approval of the transfer of any license, the department shall reissue the license with a new name only. The new license shall have the same number, and the security fund of the successor licensee shall be subject to any bond liability of all previous licensees. A transfer does not affect the liability of any previous licensee. A license is subject to any valid lien authorized by law, but a transfer must comply with this Section. The licensee shall give the department written notice of any lien placed upon the license.

**Section 11. {Display of license; consumer complaint notice.}**

(A) Each bail bondsman licensed under this Act shall display the license in a conspicuous place in the bail bondsman's principal office.

(B) Each bail bondsman licensed under this Act shall display in each office operated by the bail bondsman a sign provided by the department that contains:

- (1) the name of the department and of the sheriff;
- (2) the mailing address and telephone number of the department's main office and the sheriff's main office; and
- (3) a statement informing consumers that a complaint against a bail bondsman licensed under this Act may be directed to the department and to the sheriff.

**Section 12. {Records.}**

(A) Each licensee shall maintain records as prescribed by this Section and by board rule. The department and the sheriff may investigate the records during reasonable business hours.

(B) For each bail bond executed by the bail bondsman, the records must include:

- (1) the style and number of the case in which the bail bond is given and the court in which it is executed;
- (2) the name of the defendant released on bond;
- (3) the amount of bail set in the case;
- (4) the amount and type of security held by the bail bondsman;
- (5) a statement as to whether the security was taken for payment of a bail bond fee and/or for assurance of the defendant's appearance in court; and
- (6) a statement of the conditions under which the security will be returned.

**Section 13. {Limitation on execution of bonds.}**

(A) An individual licensee may not execute bail bonds that in the aggregate exceed 10 times the value of the property held as security on deposit or in trust; nor may he or she execute a particular bail bond in excess of the value of the property held as security on

deposit or in trust.

(B) The sheriff shall monitor each licensee's potential liability on bonds in force, and shall notify the department when the limit is reached. The department shall notify the licensee that additional bail bonds may not be written by or accepted from that licensee.

(C) When the bondsman's total liability on judgments nisi reaches two times the amount the bondsman has on deposit as security, the bondsman may not write additional bonds until the bondsman posts additional security. The department, by board rule, shall determine a proper method for monitoring a licensee's judgments nisi. The district and county clerks of the county in which the licensee's principal office is located shall comply with such monitoring method.

(D) A licensor may increase the licensee's limit at any time by posting additional cash, certificate of deposit, cashier's check, or other security approved by the department.

(E) The surety on appearance bonds in criminal cases shall be absolved of liability upon disposition of the case, and disposition as used herein shall mean a dismissal, acquittal, or finding of guilty on the charges made the basis of the bond.

(F) Subsections (A), (B) and (C) of this Section do not apply to a licensee that is a corporation.

#### **Section 14. {Requirements applicable to corporations.}**

(A) Before a corporate licensee may execute a bail bond, it shall file with the department and with the county clerk and sheriff of the county in which its registered office is located, a power of attorney designating a named agent of the corporation to execute bail bonds, its licensee, and any renewal certificates issued to the licensee. The power of attorney and the bond, when signed in the corporate name by the named agent, shall constitute a valid and binding obligation of the corporation. Each person appointed as an agent for a corporation is required to have a separate license for each corporation. Such an agent is not required to be licensed as a local recording agent under the insurance code, for the purposes of this Act.

(B) The department shall notify the state Board of Insurance of any failure by a corporate licensee to pay a judgment within 30 days after it becomes final.

(C) The certificate of authority to do business in this state issued to a corporation by the state Board of Insurance pursuant to [article insurance code], as amended, shall be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits.

#### **Section 15. {Effect of forfeiture of bail.}**

The cash deposit shall be used to pay the final judgment of any bail forfeiture that results from a licensee's execution of a bail bond if the licensee fails to satisfy the judgment not later than the thirtieth day after the date on which the judgment becomes final. If any amounts are depleted from the deposit to pay a judgment resulting from a forfeited bond, the licensee, as a condition of maintaining the license, must replenish the depleted amount up to the amount of the required minimum deposit to secure other bonds in force.

#### **Section 15A. {Surrender of principal.}**

(A) No person who executes a bail bond as a surety for a principal may surrender the principal without the written permission of the judge having jurisdiction of the case after the person who executed the bail bond has executed an affidavit to be filed with the clerk of the court, stating:

- (1) the date the bond was made;
- (2) the fee paid for the bond; and
- (3) the reason for the surrender.

(B) If the reason for surrender is deemed without reasonable cause by the principal, or any attorney representing the state or any accused in the proceeding, that person may bring the matter to the attention of the court.

(C) If the court determines that the person who surrendered the principal did so without reasonable cause, the court in its discretion may require that all or a part of the fees paid as a condition for making the bail bond shall be returned to the principal. In making the determination the court shall determine what fees, whether denominated fees for the making of the bond or not, were in fact paid for the purpose of inducing the surety to make the bond.

(D) Notwithstanding any statute required to the contrary or any provision in the bond, the court may not require or commit the surety to remain during any appeal of a case without previous approval of the surety. When a case is appealed without approval of the surety, the bail shall be discharged. Nothing shall deny the principal any right to an appeal bond as provided in the code of criminal procedure.

#### **Section 16. {Withdrawal of security.}**

Within 30 days after a licensee ceases to engage in business as a bail bondsman, the licensee shall notify the department. The department shall issue a release authorizing the licensee to withdraw the security deposit or trust if there are no outstanding judgments or bond liabilities in effect against that licensee. The sheriff shall return to the licensee or the licensee's heir or assignee any part of the deposit or trust that is not required to pay judgments or secure unexpired obligations on existing bonds in force.

#### **Section 17. {Prohibited acts; criminal penalty.}**

(A) A bail bondsman or agent of a bail bondsman may not recommend or suggest to any person whose bail bond has been posted the name of any particular attorney or firm of attorneys for employment in connection with a criminal offense. A law enforcement officer, employee of a law enforcement agency, judge, employee of a court, public official, or employee of a related agency may not recommend any particular bail bondsman to any person in need of the services of a bail bondsman, or to any representative of such a person. A bail bondsman or agent of a bondsman may not advertise or solicit business in a police station, jail, prison, detention facility, or other location for the detention of persons in the custody of law enforcement officials. A person may not falsify any record required to be maintained under this Act.

(B) A bail bondsman or agent of a bondsman may not receive compensation for the issuance of a bond or for the undertaking a surety obligation unless the person issues a receipt, upon which the bail bondsman's name and license number are printed, stating the name of the person providing the compensation, a description of the compensation and its estimated value, the matter for which it is received or is to be applied, and the name of the person who receives it. The bondsman or agency shall retain a duplicate copy of the receipt, which shall be available for inspection by the department.

(C) A bail bondsman may not give or lend, or promise to give or lend, either directly or indirectly, any money, services, or property to an attorney, a law enforcement officer, or an employee of a law enforcement agency for the referral of bail bond business. A person who is not an agent or employee of a bail bondsman may not accept or receive any form of compensation from a bail bondsman for the referral of bail bond business.

(D) It is unlawful for any person to act in the capacity of, engage in the business of, or advertise or hold himself out as, engaging in or conducting the business of a bail bondsman or as an agent or employee of a bail bondsman within this state without first obtaining a license from the department. It is unlawful for a person licensed as an agent or employee of a bondsman to act or attempt to act as an agent or employee of a bondsman unless that person is, at such time, associated with a licensed bail bondsman and acting for the licensed bondsman.

(E) No person shall accept any compensation arising from the execution of a bond from a bail bondsman unless he or she is at the time licensed under this Act as a licensee, agent, or employee of a licensee or was licensed when he or she earned the right to the compensation.

(F) No bail bondsman shall pay any compensation arising from the execution of any bond except to persons licensed under this Act as a licensee, agent, or employee of a licensee.

(G) A person commits an offense if the person intentionally or knowingly violates this Section or Section 6 of this Act. An offense under Subsection (A) or (B) of this Section or under Section 6 of this Act is a Class B misdemeanor. An offense under Subsections (C), (D), or (F) of this Section is a Class A misdemeanor.

#### **Section 18. {Civil liability.}**

(A) A person who violates a provision of this Act is liable to a person adversely affected by the violation for the amount of all actual damages produced by the violation. In the event a person adversely affected establishes that a violation was committed knowingly, the person shall be awarded three times the amount of actual damages. In this Subsection, "knowingly" means actual awareness of the Act or practice that is the alleged violation, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(B) In an action filed under this Section, a party who prevails shall receive court costs and attorneys' fees reasonable in relationship to the amount of necessary work expended.

(C) In an action filed under this Section, a party may seek and the court in its discretion may grant:

- (1) an order enjoining a party in the suit from violating this Act;
- (2) any order necessary to restore to the person any property acquired by a party in the suit in violation of this Act; or
- (3) other relief that the court considers proper, including:
  - (a) the appointment of a receiver if the court's judgment against a party in the suit is not satisfied within three months after the date of the final judgment;
  - (b) the revocation of a certificate authorizing a party in the suit to engage in business in this state; or
  - (c) an order enjoining a party in the suit from action as a bail bondsman.

(D) If a court finds that a civil action filed under this Section is groundless and brought in bad faith, or, is groundless and brought for the purpose of harassment, the court may award court costs and reasonable attorney's fee to a party.

(E) A violation of this Act is a false, misleading, or deceptive act or practice within the meaning of Section (cite) State Business and Commerce Code. A public or private right or remedy authorized by the Deceptive Trade Practices-Consumer Protection Act may be used to enforce this Act.

(F) In addition to the relief provided in Subsections (A), (B), (C), (D), and (E) of this Section, a licensee has standing in the courts of the state to seek any relief related to the enforcement of this Act. Such relief expressly includes, but is not limited to, writ of mandamus. This Subsection shall not be so construed as to require any magistrate or law enforcement official to act in violation of the (cite) State Code of Criminal Procedure or to refrain from any act permitted or mandated by the [state code of criminal procedure].

**Section 19. {Enforcement and investigation.}**

(A) The commissioner shall enforce this Act and may investigate any licensee as necessary to enforce this Act. On request, the attorney general shall assist the commissioner.

(B) A person by sworn affidavit may file a complaint alleging a violation of this Act with the commissioner or with the sheriff. The commissioner shall investigate the alleged violation on receipt of the complaint. On receipt of a complaint, the commissioner may inspect any records relevant to the complaint and may subpoena those records and any necessary witnesses.

(C) If, as a result of an investigation, the commissioner determines that a violation may have occurred, the commissioner shall hold a hearing in the manner provided for a contested case under the Administrative Procedure and Register Act.

(D) If, after the hearing, the commissioner determines that the licensee has violated this Act, the commissioner may, as appropriate:

- (1) issue a warning to the licensee;
- (2) suspend or revoke the license issued to the licensee under this Act; or
- (3) place the licensee under probation.

(E) The commissioner or the attorney general may bring an action to enjoin a violation of this Act. Venue for the action lies in the county in which the violation occurred.

**Section 19A. {Investigation by sheriff.}**

(A) The sheriff may investigate any licensee if:

- (1) the sheriff receives a sworn complaint alleging that the licensee has violated or is violating any provisions of this Act; or
- (2) the sheriff is in possession of facts sufficient to cause a reasonably prudent person to believe that a violation of this Act has occurred.

(B) If, upon investigation, the sheriff determines that a violation has occurred, he or she shall:

- (1) immediately suspend the bondsman's license for a period not to exceed 20 days, pending a hearing by the commissioner, if the violation involves duress, extortion, or fraud; or
- (2) Refer the violation to the commissioner for action under Section 19 of this Act, without suspending the bondsman's license.

(C) A bondsman whose license has been suspended by the sheriff or attorney general under Subsection (B)(1) of this Section may, within five days after the day on which his license was suspended, apply to a district court of the county in which his principal office is located to have the suspension lifted. The district court may grant or deny the application within its sound discretion. If the application is granted, the bondsman must, within three days after the oral rendition of the order lifting the suspension, post a supersedeas bond in an amount to be determined by the district court at the time of the oral rendition of the order lifting the suspension. The suspension is deemed to be lifted when the supersedeas bond is posted.

(D) The sheriff, in the course of an investigation under this Section, has the same right of access to the bondsman's records and the same authority to subpoena records and witnesses as the commissioner would have during an investigation under Section 19 of this Act.

(E) The commissioner's hearing regarding an alleged violation for which the sheriff has suspended a bondsman's license shall take precedence over any other hearing conducted under Section 19 of this Act.

(F) The sheriff's decision to investigate, suspend a license, or refer a violation to the commissioner is not reviewable under Section 20 of this Act.

(G) A sheriff who investigates a bondsman without having received the sworn complaint required in Subsection (A)(1) of this Section or without the facts required in Subsection (A)(2) of this Section knowingly commits a violation of this Act.

**Section 20. {Appeal of department decision.}**

(A) Any person adversely affected by an act or decision of the department or the commissioner in the administration, enforcement or implementation of this Act or of the rules and regulations of the Board, may appeal such act or decision under the provisions of the Administrative Procedure and Register Act, as amended.

(B) An appeal under Subsection (A) of this Section shall be by trial de novo.

(C) The district courts of this state shall have original exclusive jurisdiction of an appeal under Subsection (A) of this Section.

(D) Venue of an appeal under Subsection (A) of this Section shall be, at the election of the appellant, in:

- (1) the county of the appellant's residence, if the appellant is a natural person; or
- (2) the county of the appellant's registered office, if the appellant is a corporation; or

(3) the county in which the appellant has his principal office; or

(4) [cite county].

(E) In an appeal under Subsection (A) of this Section, the appellant shall be the plaintiff, and the department shall be the defendant.

(F) A timely filed appeal under this Section shall suspend the act or decision appealed.

### **Section 21. {Cumulative remedies.}**

The provisions of this Act are not exclusive and are in addition to any other procedures or remedies provided for by other law.

### **Section 22. {Waiver.}**

A person may not waive any provision of this Act by contract or by other means. A purported waiver is contrary to public policy and is void and unenforceable.

### **Section 23. {Grandfather clause.}**

(A) A person who holds no license is required to obtain a license under this Act to operate as a bail bondsman on or before [cite date as determined by legislature].

(B) A person who, on the effective date of this Act, is a licensed bail bondsman, may continue to operate under that law for the term of the current license in any county in which he or she is so licensed, but in no other county. On the expiration of the current license the person must obtain a license under this Act to continue to operate as a bail bondsman.

(C) An individual who, on the effective date of this Act, has been operating as a bail bondsman in the state for a period of at least 10 years shall be eligible for license under this Act without meeting the initial educational requirements established under this Act.

(D) An individual who, on or before [cite date as determined by the legislature], was operating as a bail bondsman in the state shall not be required to deposit any minimum security with the sheriff until the second anniversary of the date upon which the department issued a license, at which time the individual shall be required to deposit with the sheriff either the security on deposit with the appropriate official of the county in which his or her principal office is located or the security required by Section 8 or this Act, whichever is less.

(E) An individual licensee, whether licensed as an individual, as a partner in a partnership, or as the agent of a corporate surety, shall be exempt from meeting the initial educational requirements of this Act for a period of three years following the effective date of this Act if:

(1) the individual, on or before [cite date determined by legislature] held a license issued pursuant to [cite date determined by legislature] and such license was never revoked; or

(2) the individual was acting as a bail bondsman in this State on [cite date as determined by legislature] and was not at that time required to be licensed. The exemption provided by this Subsection shall apply to any continuing educational requirements established pursuant to this Act.

(F) The exemptions provided in Subsections (C), (D), and (E) of this Section apply only to an individual who within 120 days after the effective date of this Act:

(1) submits to the department a request to be exempted; and

(2) submits to the department a letter of certification. The letter of certification shall state the first date upon which the applicant operated as a bail bondsman in the state and the kind and value of the security the applicant has on deposit with the appropriate official of the county in which the applicant's principal office is located.

(G) The exemptions provided in Subsections (C), (D), and (E) of this Section shall expire on the third anniversary of the effective date of this Act; provided however, that any exemption granted prior to the expiration date shall survive the expiration date.

(H) No exemption granted under this Section shall be assignable or transferable.

**Section 23A. {Attorneys as sureties.}** An attorney or firm of attorneys who currently practice law in this state may not execute bail bonds or act as sureties.

### **Section 24. {Severability clause.}**

### **Section 25. {Repealer clause.}**

### **Section 26. {Effective date.}**

*ALEC's Sourcebook of American State Legislation 1995*

