

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 356*
Committee Substitute Favorable 4/10/01

Short Title: Collection Agency/Bail Bond Amendments-AB.

(Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO UPDATE THE BOND REQUIREMENTS FOR COLLECTION
3 AGENCIES; TO REQUIRE NONRESIDENT COLLECTION AGENCIES TO
4 POST A SECOND BOND FOR EXPENSES INCURRED BY THE STATE IN A
5 RECEIVERSHIP PROCEEDING INVOLVING THE COLLECTION AGENCY;
6 TO MAKE TECHNICAL CORRECTIONS; TO ALLOW BAIL BONDSMEN TO
7 CREATE SHARED TRUST ACCOUNTS; TO CODIFY AN ADMINISTRATIVE
8 RULE ON BONDSMEN AFFIDAVITS; AND TO AUTHORIZE THE
9 COMMISSIONER TO DENY LICENSE RENEWALS TO PROFESSIONAL
10 BONDSMEN UNTIL THEY CURE DEPOSIT DEFICIENCIES.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 58-70-5(f) reads as rewritten:

13 "(f) A completed statement by each stockholder owning ten percent (10%) or
14 more of the applicant's outstanding voting stock and each partner, director, ~~officer,~~
15 ~~office manager, sales representative or other collector~~ and officer actively engaged in
16 the collection agency business, containing: the name of the collection agency, the name
17 and address of the individual completing the form, the positions held by ~~such~~ the
18 individual, each conviction of any criminal offense and any criminal charges pending
19 other than minor traffic violations of ~~such~~ the individual, and the name and address of
20 three people not related to the individual who can attest to the individual's reputation for
21 honesty and fair dealings;"

22 **SECTION 2.** G.S. 58-70-20 reads as rewritten:

23 "**§ 58-70-20. Bond requirement.**

24 (a) As a condition precedent to the issuance of any permit under ~~G.S. 58-70-1,~~
25 ~~any this Article, every~~ applicant for ~~such~~ a permit shall file with the Commissioner of
26 ~~Insurance and shall thereafter maintain in force while licensed~~ a bond in favor of the
27 State of North Carolina ~~and that is~~ executed by a surety company ~~duly authorized~~
28 licensed to transact surety business in this State. The bond shall be maintained in force
29 during the permit period, continuous in ~~form~~ form, and shall remain in ~~full force and~~

1 effect until all moneys collected have been accounted for, ~~and it shall be expressly~~
2 ~~stated in the for.~~ The bond shall expressly provide that it the bond is for the benefit of
3 any person, firm or corporation for whom ~~such~~ the collection agency engages in the
4 collection of accounts. ~~Such~~ The bond shall be in the amount of ~~five thousand dollars~~
5 ~~(\$5,000)~~ ten thousand dollars (\$10,000) for the initial permit. The amount of ~~such~~ the
6 bond for any renewal permit shall be no less than ~~five thousand dollars (\$5,000)~~ ten
7 thousand dollars (\$10,000), nor more than ~~fifty thousand dollars (\$50,000)~~, seventy-five
8 thousand dollars (\$75,000), and shall be computed as follows: The total collections paid
9 directly to the collection agency less commissions earned by the collection agency on
10 those collections for the calendar year ending immediately prior to the date of
11 application, multiplied by one-sixth.

12 (b) A person required by this section to maintain a bond may, in lieu of that
13 bond, deposit with the Commissioner the equivalent amount in cash, in certificates of
14 deposit issued by banks organized under the laws of the State of North Carolina, or any
15 national bank having its principal office in North Carolina, or securities, which shall be
16 held in accordance with Article 5 of this Chapter. Securities may only be obligations of
17 the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the
18 United States, obligations of the State of North Carolina, or obligations of a city or
19 county of this State. Any proposed deposit of an obligation of a city or county of this
20 State is subject to the prior approval of the Commissioner.

21 (c) In addition to the requirements of subsections (a) and (b) of this section, as a
22 condition precedent to the issuance of any permit under this Article, every nonresident
23 applicant for a permit shall file with the Commissioner a bond in the amount of ten
24 thousand dollars (\$10,000) in favor of the Department that is executed by a surety
25 company licensed to transact surety business in this State. The bond shall be maintained
26 in force during the permit period, be continuous in form, and remain in effect until
27 terminated by the Commissioner. The bond shall expressly provide that the bond is for
28 the purpose of reimbursing the Department for expenses incurred in visiting and
29 examining a nonresident collection agency in connection with a federal bankruptcy or
30 State receivership proceeding in which the collection agency is the subject of the
31 proceeding."

32 **SECTION 3.** G.S. 58-71-40(a) reads as rewritten:

33 "(a) No person shall act in the capacity of a ~~bail bondsman~~ professional
34 bondsmen, surety bondsmen, runner-runners or perform any of the functions, duties,
35 or powers prescribed for ~~bail bondsmen~~ professional bondsmen, surety bondsmen, or
36 runners under ~~the provisions of this Article unless that person shall be is~~ is qualified and
37 ~~(except as regards an accommodation bondsman)~~ licensed in accordance with the
38 provisions of under this Article. No license shall be issued to a professional bondsman
39 or runner under this Article except to an individual natural person."

40 **SECTION 4.** G.S. 58-71-100 reads as rewritten:

41 "**§ 58-71-100. Receipts for collateral; trust accounts.**

42 (a) When a bail bondsman accepts collateral he shall give a written receipt for
43 the collateral. The receipt shall give in detail a full description of the collateral received.

1 Collateral security shall be held and maintained in trust. When collateral security is
2 received in the form of cash or check or other negotiable instrument, the licensee shall
3 deposit the cash or instrument within two banking days after receipt, in an established,
4 separate noninterest-bearing trust account in any bank located in North Carolina. The
5 trust account funds under this section shall not be commingled with other operating
6 funds.

7 (b) With the approval of the Commissioner, bail bondsmen operating out of the
8 same business office or location may establish a shared trust account for collateral
9 security received by them. The Commissioner may require the bondsmen desiring to
10 establish the shared trust account to furnish the Commissioner information about their
11 business that the Commissioner considers necessary to administer this Article
12 effectively."

13 **SECTION 5.** G.S. 58-71-140 reads as rewritten:

14 **"§ 58-71-140. Registration of licenses and power of appointments by insurers.**

15 (a) No professional bail bondsman shall become a surety on an undertaking
16 unless he or she has registered his or her current license in the office of the clerk of
17 superior court in the county in which he or she resides and a certified copy of the same
18 with the clerk of superior court in any other county in which he or she shall write bail
19 bonds.

20 (b) A surety bondsman shall register his or her current surety bondsman's license
21 and a certified copy of his or her power of appointment with the clerk of superior court
22 in the county in which the surety bondsman resides and with the clerk of superior court
23 in any other county in which the surety bondsman writes bail bonds on behalf of an
24 insurer.

25 (c) No runner shall become surety on an undertaking on behalf of a professional
26 bondsman unless that runner has registered his or her current license and a certified
27 copy of his or her power of attorney in the office of the clerk of superior court in the
28 county in which the runner resides and with the clerk of superior court in any other
29 county in which the runner writes bail bonds on behalf of the professional bondsman.

30 (d) Professional bail bondsmen, surety bondsmen, and runners shall file with the
31 clerk of court having jurisdiction over the principal, an affidavit on a form furnished by
32 the Administrative Office of the Courts. The affidavit shall include, but not be limited
33 to:

34 (1) A statement that the bondsman has not, nor has anyone for the
35 bondsman's use, been promised or received any collateral, security, or
36 premium for executing this appearance bond.

37 (2) If promised a premium, the amount of the premium promised and the
38 due date.

39 (3) If the bondsman has received a premium, the amount of premium
40 received.

41 (4) If given collateral security, the name of the person from whom it is
42 received, and the nature and amount of the collateral security, listed in
43 detail."

1 **SECTION 6.** G.S. 58-71-160 reads as rewritten:

2 "**§ 58-71-160. Security deposit to be maintained.**

3 (a) Any professional bondsman, whose security deposits with the Commissioner
4 are, for any reason, reduced in value below the requirements of this Article, shall
5 immediately upon receipt of a notice of deficiency from the Commissioner of Insurance
6 deposit such additional securities as are necessary to comply with the law. No
7 professional bondsman shall sign, endorse, ~~execute~~ execute, or become surety on any
8 additional bail bonds, or pledge or deposit any cash, check, or other security of any
9 nature in lieu of a bail bond in any county in North Carolina until ~~such time as he the~~
10 professional bondsman has made such additional deposit of securities as ~~shall be~~
11 required by the notice of deficiency.

12 (b) The Commissioner may deny the renewal of any license held by a
13 professional bondsman under this Chapter or may deny the issuance of any license
14 applied for by a professional bondsman under this Chapter if, at the time of the renewal
15 application or license application, the professional bondsman has not complied with a
16 notice of deficiency under subsection (a) of this section. The Commissioner may issue
17 the renewal license or the new license upon compliance by the professional bondsman
18 with the notice of deficiency."

19 **SECTION 7.** G.S. 58-71-170(a) reads as rewritten:

20 (a) Whenever the Commissioner ~~deems~~ considers it prudent, the Commissioner
21 shall visit and examine or cause to be visited and examined by a competent person
22 appointed by the Commissioner for that purpose any professional bail ~~bondsman~~
23 bondsman, surety bondsman, or runner subject to ~~the provisions of this Article~~. For this
24 purpose the Commissioner or person making the examination shall have free access to
25 all ~~books and papers records~~ of the ~~bondsman~~ licensee that relate to the ~~bondsman's~~
26 licensee's business and to the ~~books and papers records~~ kept by any of the ~~bondsman's~~
27 agents or runners licensee's agents."

28 **SECTION 8.** This act becomes effective October 1, 2001, and applies to
29 permits or licenses issued or renewed on or after that date.