

SENATE BILL 841

E2, C4, C2

0lr1808

By: **Senator Conway**

Introduced and read first time: February 11, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Bail Bonds – Surety Bondsmen – Licensure, Regulation, and Financing of**
3 **Bail Bonds**

4 FOR the purpose of requiring licensure by the Maryland Insurance Commissioner of
5 certain bail bondsmen; exempting property bondsmen from certain licensing
6 requirements; altering certain definitions; authorizing the Commissioner to
7 take certain disciplinary action in connection with certain violations;
8 authorizing a premium finance company to finance bail bonds under certain
9 circumstances; requiring the Commissioner to adopt regulations regarding the
10 premium financing of bail bonds; defining the scope of certain provisions;
11 providing for the repeal of laws inconsistent with this Act; providing for the
12 construction of this Act; making certain stylistic changes; providing for a
13 delayed effective date; and generally relating to the licensure and regulation of
14 surety bondsmen.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Procedure
17 Section 5–203(a) and 5–210
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2009 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Criminal Procedure
22 Section 5–209
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2009 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Insurance
27 Section 10–126(a), 10–301, 10–304(a), and 10–305
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2003 Replacement Volume and 2009 Supplement)

2 BY repealing

3 Article – Insurance

4 Section 10–302

5 Annotated Code of Maryland

6 (2003 Replacement Volume and 2009 Supplement)

7 BY adding to

8 Article – Insurance

9 Section 23–104

10 Annotated Code of Maryland

11 (2006 Replacement Volume and 2009 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article – Criminal Procedure**

15 5–203.

16 (a) (1) Subject to paragraph (2) of this subsection, a circuit court may
17 adopt rules setting the terms and conditions of bail bonds filed in that court and rules
18 on the qualifications of and fees charged by bail bondsmen.

19 (2) Notwithstanding any other law or rule to the contrary, if expressly
20 authorized by the court, a defendant or a private surety acting for the defendant may
21 post a bail bond by executing it in the full penalty amount and depositing with the
22 clerk of court the greater of 10% of the penalty amount or \$25.

23 (3) A bail bond commissioner may be appointed to carry out rules
24 adopted under this section.

25 (4) A violation of a rule adopted under this section is contempt of court
26 and shall be punished in accordance with Title 15, Chapter 200 of the Maryland Rules.

27 (5) A person may not engage in the business of [becoming a surety for
28 compensation on] bail bonds in criminal cases unless the person is:

29 (i) approved in accordance with any rules adopted under this
30 [section] **SUBTITLE**; and

31 (ii) 1. [if required under the Insurance Article,] licensed in
32 accordance with **TITLE 10, SUBTITLES 1 AND 3 OF** the Insurance Article; **OR**

33 2. **EXECUTING A BAIL BOND SECURED BY REAL**
34 **ESTATE IN THE STATE AS PROVIDED UNDER § 5–209 OF THIS SUBTITLE.**

1 5–209.

2 (a) In this section, “property bondsman” means a person other than a
3 defendant who executes a bail bond secured by real estate in the State.

4 (b) This section does not apply in the Seventh Judicial Circuit.

5 (c) A property bondsman may authorize an agent in writing to execute on
6 behalf of the property bondsman:

7 (1) a bail bond; and

8 (2) a declaration of trust or deed of trust to secure a bail bond by real
9 estate.

10 (d) If all other requirements of law are met, a person authorized by law to
11 take a bail bond shall take a bail bond secured by declaration of trust or deed of trust
12 on real estate properly executed by an authorized agent of a property bondsman.

13 (e) (1) A person who acts as a property bondsman for compensation shall
14 provide to the court documentation of ownership, tax status, and liens against the
15 property posted.

16 (2) A person described under paragraph (1) of this subsection who
17 willfully provides false documentation is guilty of a misdemeanor and on conviction is
18 subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

19 5–210.

20 (a) (1) In this section the following words have the meanings indicated.

21 (2) “Agent” means a person that acts or is authorized to act as the
22 representative of a bail bondsman.

23 (3) (i) “Bail bondsman” [means a licensed limited surety agent or a
24 licensed professional bail bondsman] **HAS THE MEANING STATED IN § 10–301 OF**
25 **THE INSURANCE ARTICLE.**

26 (ii) “Bail bondsman” does not include a person that contracts
27 with a public agency to provide bail bonds to persons detained in a correctional
28 facility.

29 (b) On the grounds of a courthouse or correctional facility, a bail bondsman
30 or an agent of a bail bondsman may not:

1 (1) approach, entice, or invite a person to use the services of a bail
2 bondsman;

3 (2) distribute, display, or wear an item that advertises the services of
4 a bail bondsman; or

5 (3) otherwise solicit business as a bail bondsman.

6 (c) A person who violates subsection (b) of this section is guilty of a
7 misdemeanor and on conviction is subject to:

8 (1) a fine not exceeding \$100 for a first offense; and

9 (2) a fine not exceeding \$1,000 for a subsequent offense.

10 (d) A person convicted of a violation of subsection (b) of this section shall be
11 referred to the Insurance Commissioner for appropriate action.

12 Article – Insurance

13 10–126.

14 (a) The Commissioner may deny a license to an applicant under §§ 2–210
15 through 2–214 of this article, or suspend, revoke, or refuse to renew or reinstate a
16 license after notice and opportunity for hearing under §§ 2–210 through 2–214 of this
17 article if the applicant or holder of the license:

18 (1) has willfully violated this article or another law of the State that
19 relates to insurance;

20 (2) has intentionally misrepresented or concealed a material fact in
21 the application for a license;

22 (3) has obtained or attempted to obtain a license by misrepresentation,
23 concealment, or other fraud;

24 (4) has misappropriated, converted, or unlawfully withheld money
25 belonging to an insurer, insurance producer, beneficiary, or insured;

26 (5) has willfully and materially misrepresented the provisions of a
27 policy;

28 (6) has committed fraudulent or dishonest practices in the insurance
29 business;

30 (7) has participated, with or without the knowledge of an insurer, in
31 selling motor vehicle insurance without an actual intent to sell the insurance, as

1 evidenced by a persistent pattern of filing certificates of insurance together with or
2 closely followed by cancellation notices for the insurance;

3 (8) has been convicted by final judgment in any state or federal court
4 of a felony or crime involving moral turpitude;

5 (9) has knowingly participated in writing or issuing substantial
6 over-insurance of property insurance risks;

7 (10) has failed an examination required by this subtitle;

8 (11) has willfully failed to comply with or has willfully violated a proper
9 order, subpoena, or regulation of the Commissioner or the insurance regulatory
10 authority of another state;

11 (12) has failed or refused to pay over on demand money that belongs to
12 an insurer, insurance producer, or other person **OR GOVERNMENTAL UNIT** entitled to
13 the money;

14 (13) has otherwise shown a lack of trustworthiness or competence to act
15 as an insurance producer;

16 (14) is not or does not intend to carry on business in good faith and
17 represent to the public that the person is an insurance producer;

18 (15) has been denied a license or certificate in another state or has had
19 a license or certificate suspended or revoked in another state;

20 (16) has intentionally or willfully made or issued, or caused to be made
21 or issued, a statement that materially misrepresents or makes incomplete
22 comparisons about the terms or conditions of a policy or contract issued by an
23 authorized insurer, for the purpose of inducing or attempting to induce the owner of
24 the policy or contract to forfeit or surrender it or allow it to lapse in order to replace it
25 with another;

26 (17) has transacted insurance business that was directed to the
27 applicant or holder for consideration by a person whose license or certificate to engage
28 in the insurance business at the time was suspended or revoked, and the applicant or
29 holder knew or should have known of the suspension or revocation;

30 (18) has solicited, procured, or negotiated insurance contracts for an
31 unauthorized insurer, including contracts for nonprofit health service plans, dental
32 plan organizations, and health maintenance organizations;

33 (19) has knowingly employed or knowingly continued to employ an
34 individual acting in a fiduciary capacity who has been convicted of a felony or crime of
35 moral turpitude within the preceding 10 years;

1 (20) has forged another's name to an application for insurance or to any
2 document related to an insurance transaction;

3 (21) has improperly used notes or any other reference material to
4 complete an examination for a license;

5 (22) has failed to pay income tax or related interest or penalty under:

6 (i) an assessment under the Tax – General Article that is final
7 and no longer subject to review by the tax court; or

8 (ii) an order of the tax court that is final and no longer subject
9 to judicial review; [or]

10 (23) in providing information under § 10–118 of this subtitle regarding
11 the termination of an appointment with an insurer, has made an inaccurate statement
12 with actual malice; **OR**

13 **(24) HAS VIOLATED § 5–203(A)(5)(I) AND (II)1 OR § 5–210(B) OF**
14 **THE CRIMINAL PROCEDURE ARTICLE.**

15 10–301.

16 (a) In this subtitle the following words have the meanings indicated.

17 (b) “Bail bond” means a written obligation of a defendant, with or without a
18 surety or collateral security, that:

19 (1) is conditioned on the appearance of the defendant as required; and

20 (2) provides for the payment of a penal sum according to its terms.

21 (c) **(1) “Bail bondsman” means [an authorized insurance producer of a**
22 **surety insurer] AN INSURANCE PRODUCER WHO:**

23 **(I) IS LICENSED UNDER TITLE 10, SUBTITLE 1 OF THIS**
24 **ARTICLE TO SELL PROPERTY AND CASUALTY INSURANCE; AND**

25 **(II) PROVIDES BAIL BOND SERVICES.**

26 **(2) “BAIL BONDSMAN” DOES NOT INCLUDE:**

27 **(I) A DEFENDANT WHO GUARANTEES THE DEFENDANT’S**
28 **OWN APPEARANCE IN ACCORDANCE WITH § 5–203(C) OR § 5–205(B)(3) OF THE**
29 **CRIMINAL PROCEDURE ARTICLE;**

1 **(II) AN INDIVIDUAL WHO, NOT MORE THAN A TOTAL OF**
2 **THREE TIMES DURING A CALENDAR YEAR:**

3 **1. PROVIDES BAIL BOND SERVICES FOR A**
4 **GREAT-GRANDPARENT, GRANDPARENT, PARENT, UNCLE, AUNT, BROTHER,**
5 **SISTER, CHILD, GRANDCHILD, GREAT-GRANDCHILD, NEPHEW, OR NIECE; AND**

6 **2. IS NOT COMPENSATED FOR ANY OF THOSE**
7 **SERVICES;**

8 **(III) A PROPERTY BONDSMAN WHO EXECUTES A BAIL BOND**
9 **SECURED BY REAL ESTATE IN THE STATE IN ACCORDANCE WITH § 5-209 OF THE**
10 **CRIMINAL PROCEDURE ARTICLE; OR**

11 **(IV) A PERSON ACTING FOR A DEFENDANT WITHOUT**
12 **COMPENSATION IN ACCORDANCE WITH § 5-203(C) OR § 5-205(B)(3) OF THE**
13 **CRIMINAL PROCEDURE ARTICLE.**

14 (d) “Collateral security” means any property deposited, pledged, or
15 encumbered to secure the performance of a bail bond.

16 (e) “License” means a license issued by the Commissioner to [provide bail
17 bondsman services] **ACT AS A PROPERTY AND CASUALTY INSURANCE PRODUCER**
18 **UNDER SUBTITLE 1 OF THIS TITLE.**

19 (f) **(1)** “Provide bail [bondsman] **BOND** services” means to provide any
20 service in the bail bondsman trade.

21 **(2) “PROVIDE BAIL BOND SERVICES” INCLUDES, IN CONNECTION**
22 **WITH A JUDICIAL PROCEEDING:**

23 **(I) EXECUTING A BAIL BOND AS A SURETY OR AS AN**
24 **INSURANCE PRODUCER FOR A SURETY;**

25 **(II) NEGOTIATING A BAIL BOND;**

26 **(III) PLEDGING PERSONAL OR REAL PROPERTY TO SECURE A**
27 **BAIL BOND;**

28 **(IV) PROCURING A BAIL BOND;**

29 **(V) SELLING A BAIL BOND;**

1 **(VI) SOLICITING A BAIL BOND;**

2 **(VII) FINANCING A BAIL BOND THROUGH A PREMIUM**
3 **FINANCE COMPANY IN ACCORDANCE WITH TITLE 23 OF THIS ARTICLE; OR**

4 **(VIII) OTHERWISE EFFECTUATING A BAIL BOND.**

5 (g) (1) “Surety” means a person, other than the defendant, that
6 guarantees the appearance of the defendant by executing a bail bond.

7 (2) “Surety” includes [an uncompensated or accommodation surety] **A**
8 **PERSON WHO PROVIDES ANY SERVICE IN THE BAIL BONDSMAN TRADE EVEN**
9 **WITHOUT COMPENSATION.**

10 (h) “Surety insurer” means a person that, for compensation, directly or
11 through an authorized insurance producer, acts as a surety on a bail bond.

12 [10–302.

13 This subtitle does not apply to bail bondsmen that provide bail bondsman
14 services under § 5–203 of the Criminal Procedure Article.]

15 10–304.

16 (a) An individual must obtain a license before the individual [provides bail
17 bondsman services] **ACTS AS A BAIL BONDSMAN** in the State.

18 10–305.

19 [An] **TO QUALIFY FOR A LICENSE, AN** applicant [for a license must be an
20 individual who meets] **SHALL MEET** the requirements for acting as a property and
21 casualty insurance producer under Subtitle 1 of this title.

22 **23–104.**

23 **(A) A PREMIUM FINANCE COMPANY MAY ENGAGE IN FINANCING BAIL**
24 **BONDS THROUGH AN AGREEMENT WITH A BAIL BONDSMAN LICENSED UNDER**
25 **TITLE 10, SUBTITLES 1 AND 3 OF THIS ARTICLE.**

26 **(B) THE COMMISSIONER SHALL ADOPT REGULATIONS REGULATING**
27 **FINANCE AGREEMENTS BETWEEN BAIL BONDSMEN LICENSED UNDER TITLE 10,**
28 **SUBTITLES 1 AND 3 OF THIS ARTICLE AND PREMIUM FINANCE COMPANIES**
29 **REGISTERED UNDER THIS TITLE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That all laws or parts of laws,
2 public general or public local, inconsistent with this Act, are repealed to the extent of
3 the inconsistency.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act does not affect
5 any bail bond that, on December 31, 2010, has not been discharged and does not affect
6 the forfeiture of any bail bond on or before December 31, 2010, or any enforcement
7 action pending with regard to such forfeiture or any action pending as to the striking
8 of such forfeiture.

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 January 1, 2011.