

AN ACT

ENTITLED, An Act to revise and strengthen licensing qualifications, fees, and penalties for bail bondspersons and runners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-22-3 be amended to read as follows:

58-22-3. The following persons or classes may not be bail bondspersons or runners and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs, and constables, any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. Violation of this section is a Class 6 felony.

Section 2. That § 58-22-4 be amended to read as follows:

58-22-4. No person may act in the capacity of a bail bondsperson or runner or perform any of the functions, duties, or powers prescribed for bail bondsperson or runners under the provisions of this chapter unless that person is qualified and licensed as provided in this chapter. However, none of the provisions of this section prohibit any person, from pledging real or other property as security for a bail bond in judicial proceedings if that person does not receive, or is not promised, money or other things of value therefor. Acting in the capacity of a bail bondsperson or runner without being licensed is a Class 6 felony. Receipt of money or other things of value by any person not acting in the capacity of a bail bondsperson is a Class 2 misdemeanor.

Section 3. That § 58-22-5 be amended to read as follows:

58-22-5. No license may be issued except in compliance with this chapter and none may be issued except to an individual. However, any person performing the functions of a bail bondsperson or runner, within the definition of this chapter, on July 1, 1966, is not required to take an examination, but shall be issued a license upon making the application required by this chapter, and renewals shall be granted subject to the provisions of §§ 58-22-6, 58-22-19, and 58-22-21. The provisions of this

chapter do not apply to the holder of a valid all lines fire and casualty agent's license held prior to July 1, 1998.

A firm, partnership, association, or corporation, as such need not be licensed.

Section 4. That § 58-22-6 be amended to read as follows:

58-22-6. The application for license, in addition to the other matters set out in this chapter to serve as a bail bondsperson shall affirmatively show that the applicant is a natural person who has reached the age of twenty-one years, is a citizen of the United States, has been a bona fide resident of the state for the preceding year, will actively engage in the bail bond business, and has not been convicted of, or pled guilty or nolo contendere to, a felony or a crime involving moral turpitude or any crime involving moral turpitude. The director of the Division of Insurance may waive the restriction relating to the conviction of, or plea of guilty or nolo contendere to, a felony if three years have elapsed since the completion of the sentence imposed by the court in connection with the violation.

Section 5. That § 58-22-7 be amended to read as follows:

58-22-7. A license fee of thirty dollars shall be submitted to the director with each application for license as bail bondsperson.

The applicant shall also furnish with the application, a complete set of the applicant's fingerprints and a recent credential-size full face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer.

Section 6. That § 58-22-8 be amended to read as follows:

58-22-8. Every insurer shall annually, prior to May first, furnish the director a list of all surety bondsperson appointed by it to write bail bonds on its behalf accompanied by a renewal fee of ten dollars for each bondsperson being reappointed. Every such insurer who subsequently appoints a surety bondsperson in the state shall give notice to the director along with a written application for license for bondspersons accompanied by a ten dollar appointment fee. All such appointments are

subject to the issuance of a license to such surety bondsperson.

Section 7. That § 58-22-12 be amended to read as follows:

58-22-12. In addition to the other requirements prescribed in this chapter, an applicant for a license to serve as a runner shall affirmatively show:

- (1) That the applicant is a natural person who has reached the age of twenty-one years;
- (2) That the applicant is a citizen of the United States and has been a bona fide resident of this state for more than one year last past;
- (3) That each appointing bail bondsperson is obligated to supervise the applicant's activities, and be responsible for the applicant's conduct in the bail bond business; and
- (4) That the applicant has not been convicted of, nor has pled guilty or nolo contendere to, a felony or of any crime involving moral turpitude. The director of the Division of Insurance may waive the restriction relating to the conviction of, or plea of guilty or nolo contendere to, a felony or a crime involving moral turpitude if three years have elapsed since completion of the sentence imposed by the court in connection with the violation.

Section 8. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

The application for a runner's license shall be accompanied by a written appointment of the applicant as a runner by each licensed bail bondsperson employing the applicant.

Section 9. That § 58-22-13 be amended to read as follows:

58-22-13. Each runner's application shall be accompanied by a license fee of thirty dollars and an appointment fee of ten dollars for each bail bondsperson employing the applicant and shall be submitted to the director with each application for a license to serve as a runner, together with fingerprints and photograph. The employing bail bondsperson is responsible for submitting the application and appointment fee.

Section 10. That § 58-22-14 be amended to read as follows:

58-22-14. The applicant for any license under this chapter shall apply in writing, on forms prepared and supplied by the director, and the director may propound any reasonable interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating to the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinion of the director, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The director may also conduct any reasonable inquiry or investigation the director sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed including a criminal background check, and the applicant is responsible for any costs associated with a criminal background check as charged by the appropriate agency conducting and furnishing the background check. The applicant shall provide any necessary authorization requested by the director to facilitate an inquiry or investigation.

Section 11. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

Any person holding a license under this chapter shall notify the Division of Insurance of a conviction or plea of guilty or nolo contendere to a felony or a crime of moral turpitude within twenty days of the conviction or plea. Violation of this section is a Class 1 misdemeanor.

Section 12. That § 58-22-20 be amended to read as follows:

58-22-20. A renewal license shall be issued by the director to a licensee who has continuously maintained a license in effect without further examination, unless deemed necessary by the director, but such license is in all other respects required to comply with and be subject to the provisions of this chapter. After the receipt of such licensee's application for renewal the current license shall continue in effect until the renewal license is issued or denied for cause.

Section 13. That § 58-22-21 be amended to read as follows:

58-22-21. The director may deny, suspend, revoke, or refuse to renew any license issued under this chapter for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the director;
- (2) Violation of any laws of this state to bail in the course of dealings under the license issued the licensee by the director;
- (3) Material omission, misstatement, misrepresentation, or fraud in obtaining the license;
- (4) Misappropriation, conversion, or unlawful withholding of moneys, belonging to insurers or others and received in the conduct of business under the license;
- (5) Conviction of, or a plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude;
- (6) Fraudulent or dishonest practices in the conduct of business under the license;
- (7) Willful failure to comply with, or willful violation of any proper order, rule, or regulation of the director, or the provisions of this chapter;
- (8) If, in the judgment of the director, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on 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 carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide such licensee's premiums in the case of professional bondsperson, and for such reasons is found by the director to be a source of detriment, injury, or loss to the public.

Section 14. That § 58-22-24 be amended to read as follows:

58-22-24. Professional bondspersons shall, before writing cash or security bail bonds, deposit with the director in the same manner as required of domestic insurers, an amount determined by the director of not less than ten thousand dollars and an amount necessary to cover forfeitures as required to be filed with the director annually. Such deposit is subject to all laws, rules, and regulations

concerning deposits by domestic insurers. The director may waive the deposit requirement contained in this section for a person authorized pursuant to § 58-22-37 to countersign for a bail bondsperson.

Section 15. That § 58-22-25 be amended to read as follows:

58-22-25. No bail bondsperson may become a surety on an undertaking unless the bail bondsperson has registered in the office of the sheriff in the county in which the bondsperson resides. The bail bondsperson may then become a surety in any other county upon presenting to the official required to approve the sufficiency of bail, a certificate of such registration. A surety bondsperson shall also file a certified copy of appointment by power of attorney from each insurer which the bail bondsperson represents as agent with the sheriff. Registration and filing of certified copy of renewed power of attorney shall be performed annually on October first. No bail bondsperson may register with the sheriff unless such bail bondsperson is currently licensed with the director. Any violation of this section is a Class 1 misdemeanor.

Section 16. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

Any out-of-state bail bondsperson or runner entering this state shall notify all local law enforcement agencies in the area where the bail bondsperson or runner intends to conduct bail bondspersons or runner activities, including, at a minimum, the office of the county's, sheriff's, and also, if operating within a municipality, the office of the municipal police as to presence and intended activity and present evidence of out-of-state licensure. No out-of-state bail bondsperson or runner who is unlicensed in their state of domicile may conduct any bail bondsperson's or runner activities in this state. Violation of this section is a Class 6 felony.

Section 17. That § 58-22-26 be amended to read as follows:

58-22-26. Any bail bondsperson who discontinues writing bail bonds during the period for which licensed shall notify the sheriffs with whom registered and return the license to the director for cancellation within thirty days from such discontinuance.

Section 18. That § 58-22-27 be amended to read as follows:

58-22-27. Every person duly licensed as a bail bondsperson may appoint as a runner any person who holds or has qualified for a runner's license. Each bail bondsperson appointing a runner in this state shall file with, and obtain approval from the director for each appointment which shall be in a format prescribed by the director, and pay a fee of ten dollars. The appointment is effective upon the date it is processed by the Division of Insurance. The director may deny an appointment for reasons of protection of the public health, welfare, or safety, including the following:

- (1) The runner to be appointed is not properly licensed;
- (2) An investigation or administrative action concerning the runner or bail bondsperson by the Division of Insurance is eminent or on-going;
- (3) Material omission, misstatement, misrepresentation, or fraud in applying for the appointment; or
- (4) Conviction of, or a plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude.

The director shall give written notice to the bail bondsperson of approval, denial, or delay of a runner's appointment within thirty days of the bail bondsperson filing the appointment and shall send a copy of the notice to the runner.

Section 19. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

Each bail bondsperson shall, on or before May first of each year, furnish to the director a list of all runners appointed, accompanied by a ten dollar reappointment fee for each runner. Each bail bondsperson who, subsequent to the filing of this list, appoints additional persons as runners shall comply with the requirements of this section.

Section 20. That § 58-22-29 be amended to read as follows:

58-22-29. No bail bondsperson or runner may pay a fee or rebate or give or promise anything of

value to the principal or an agent of the principal. Violation of this section is a Class 1 misdemeanor.

Section 21. That § 58-22-30 be amended to read as follows:

58-22-30. No bail bondsperson or runner may accept anything of value from a principal except the premium. However, the bondsperson may accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsperson shall be reasonable in relation to the amount of the bond. Violation of this section is a Class 1 misdemeanor.

Section 22. That § 58-22-32 be amended to read as follows:

58-22-32. No bail bondsperson or runner may solicit business in or about any place where prisoners are confined. Violation of this section is a Class 1 misdemeanor.

Section 23. That § 58-22-33 be amended to read as follows:

58-22-33. No bail bondsperson or runner may pay a fee or rebate or give or promise anything of value to a jailer, police, peace officer, committing magistrate, or any other person who has power to arrest or 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 the forfeiture thereof. Violation of this section is a Class 6 felony.

Section 24. That § 58-22-34 be amended to read as follows:

58-22-34. No bail bondsperson or runner may 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. Violation of this section is a Class 6 felony.

Section 25. That § 58-22-35 be amended to read as follows:

58-22-35. No bail bondsperson or runner may participate in the capacity of an attorney at a trial or hearing of one on whose bond such bail bondsperson or runner is surety. Violation of this section is a Class 1 misdemeanor.

Section 26. That § 58-22-36 be amended to read as follows:

58-22-36. No bail bondsperson or runner may suggest or advise the employment of or name for employment any particular attorney to represent the bondsperson's or runner's principal. Violation of this section is a Class 2 misdemeanor.

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I certify that the attached Act originated in the

SENATE as Bill No. 160

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 160
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 19__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State