CHAPTER 26.1-26.6
BAIL BOND AGENTS

26.1-26.6-01. Definition.

As used in this chapter, unless the context otherwise requires, "bail bond agent" means any person that has been licensed by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.

26.1-26.6-02. Licensing and continuing education requirements.

The licensing and continuing education requirements under chapter 26.1-26 apply to bail bond agents.

26.1-26.6-03. Persons disqualified as bail bond agents - Penalty.

The following persons or classes may not be bail bond agents 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, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor.

26.1-26.6-04. Appointment and license as bail bond agent - Pledge of property as security - Penalty.

A person may not act in the capacity of a bail bond agent or perform any of the functions, duties, or powers prescribed for a bail bond agent under this chapter unless that person is appointed and licensed as provided in this chapter. However, this section does not prohibit any individual from pledging real or other property as security for a bail bond in judicial proceedings if the individual does not receive, or is not promised, money or other things of value therefor. Violation of this section is a class A misdemeanor.

26.1-26.6-05. Violations - Penalties.

1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
   a. Recommending any particular attorney at law to handle the case in which the bail bond agent has caused a bond to be issued under this chapter.
   b. Forging the name of another to a bond or application for bond.
   c. Soliciting business in or about any place for prisoners or persons confined, arraigned, or in custody.
   d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer or officer of the law, 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 entreatment thereof, or to secure, delay, or other advantage. This subdivision does not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.
   e. Paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond.
   f. Accepting anything of value from a principal other than a premium. Provided, the bail bond agent may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond. Such collateral security or other indemnity required by the bail bond agent must be reasonable in relation to the amount of the bond.
   g. Willfully failing to return collateral security to the principal when the principal is entitled to the security.

h. Knowingly employing a person whose insurance producer license has been revoked, suspended, or denied in this or any other state.
i. Knowingly or intentionally executing a bail bond without collecting in full a premium for the bond, at the premium rate as filed with and approved by the commissioner.
j. Failing to pay any forfeiture as directed by a court and as required by this chapter.

2. For purposes of subdivisions f and g of subsection 1, a bail bond agent shall monitor the status of bonds written by the bail bond agent to make timely return of the collateral security to the principal. It is not a defense to administrative action under this section that the bail bond agent did not know liability on the bond had been terminated or that the principal was entitled to return of the security.
3. A bail bond agent or bail bond agency may not advertise as or hold itself out to be a surety company.
4. A bail bond agent may not sign nor countersign any blank in any bond, nor give up power of attorney to or otherwise authorize, anyone to countersign the bail bond agent's name to bonds.
5. When a bail bond agent accepts collateral, the bail bond agent shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The bail bond agent shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.
6. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

26.1-26.6-06. Access to jails.

Every person who holds a valid bail bond agent license issued by the insurance commissioner is entitled to equal access to the jails of the state for the purpose of making bond, subject to the provisions of this chapter and the rules adopted in the manner provided by law. Jail personnel, law enforcement officers, and court personnel may not suggest, recommend, advise, or promote a particular bail bond agent. Each jail shall furnish a space convenient to the telephones in the booking area to be used to hold business cards of bail bond agents.

26.1-26.6-07. Surrender of defendant prior to breach.

At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or bail bond agent may surrender the defendant, or the defendant may surrender, to the official to whose custody the defendant would have been given had the defendant been committed. The defendant may be surrendered without the return of premium for the bond if the defendant has been guilty of nonpayment of premium, changing address without notifying the bail bond agent, self-concealment, or leaving the jurisdiction of the court without the permission of the bail bond agent, or of violating the defendant's contract with the bail bond agent in any way that does harm to the bail bond agent, or the surety, or violates the obligation to the court. For the purpose of surrendering the defendant, the surety may arrest the defendant before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor.

26.1-26.6-08. Maximum commission or fee - Mileage.

A bail bond agent may not charge a premium, commission, or fee for a bond in an amount more than twenty percent of the amount of bail furnished by the bail bond agent, or one hundred fifty dollars, whichever is greater. In addition to the premium, commission, or fee charged under this section, a bail bond agent may charge for mileage reimbursement, which may not exceed mileage reimbursement rates provided for state employees under section 54-06-09.

26.1-26.6-09. Failure to appear.

If a defendant fails to appear for a scheduled court appearance, the clerk of court shall notify the bail bond agent. If the bail bond agent returns the defendant to the jurisdiction of the court, the bail bond agent may petition the court for a return of the forfeiture. If the bail bond agent returns the defendant to the jurisdiction of the court within six months of receiving notice of the failure to appear, the court shall return at least fifty percent of the forfeiture upon petition by the bail bond agent. If the bail bond agent returns the defendant to the jurisdiction of the court beyond six months of receiving notice of the failure to appear, the court may return the forfeiture upon receipt of a petition from the bail bond agent, less five percent for court costs.

26.1-26.6-10. Rules.

The commissioner may adopt reasonable rules for implementation and administration of this chapter.