

[Second Reprint]

ASSEMBLY, No. 3012

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED NOVEMBER 25, 2002

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Co-Sponsored by:

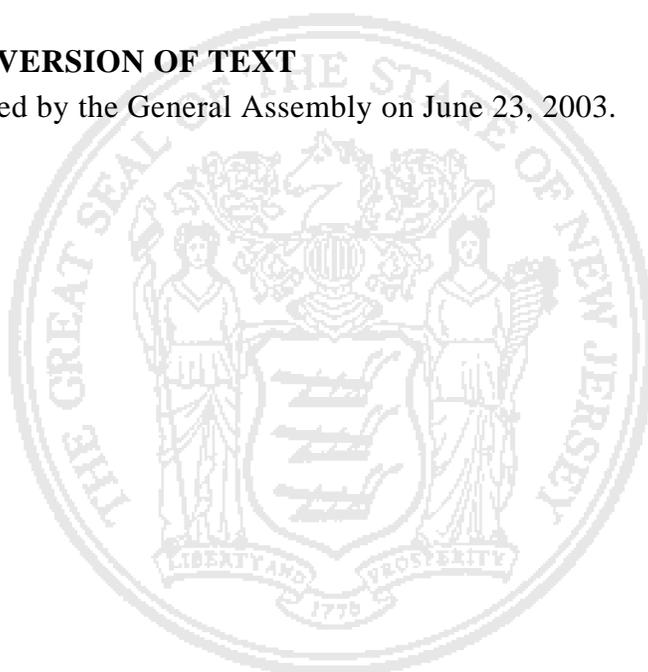
Assemblyman Russo, Senators Inverso, Girgenti, Sarlo, Geist and Gill

SYNOPSIS

Revises procedures for issuance of bail bonds in this State.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 23, 2003.



(Sponsorship Updated As Of: 12/12/2003)

1 AN ACT concerning the issuance of bail bonds by surety companies.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. As used in this act:

7 ¹["Agency" means an entity that in any manner negotiates, solicits
8 or effects a bail bond or is affiliated in any manner with the execution
9 of a bail bond.]¹

10 "Bail agent ¹or agency¹" means any person ¹[who] or entity that
11 solicits, negotiates or sells bail bonds, or is affiliated in any manner
12 with the execution of bail and¹ is licensed as a limited lines insurance
13 producer pursuant to P.L.2001, c.210 (C.17:22A-26 et seq.) ¹, an
14 insurance producer or a limited insurance representative¹.

15 "Commissioner" means the Commissioner of Banking and
16 Insurance.

17 "Surety company" means an insurer authorized to transact surety
18 business in this State.

19

20 ²[2. a. For every bail bond posted for the release of a defendant
21 from custody or incarceration, the surety company, and its agents or
22 employees, ¹its bail agents or agencies¹ shall charge and collect a fee
23 in the amount of 10 percent of the face amount of the bond or \$125,
24 whichever is greater, as the premium for executing the bail bond, prior
25 to or at the time of the filing of the bail bond. The bail agent ¹[who]
26 or agency that¹ executes the bail bond shall ¹[file an affidavit, as
27 approved by the commissioner, with the Superior Court] , at the time
28 the bond is posted, attest in writing to the appropriate court¹ or other
29 agency authorized to accept bail bonds, ¹[upon the execution of the
30 bail bond, attesting]¹ that the full premium has been collected.
31 ¹Nothing in this section shall be construed to preclude a person from
32 obtaining premium financing, pursuant to P.L.1968, c.221 (C.17:16D-
33 1 et seq.), to facilitate the payment of the full bail bond premium. No
34 surety company or its agents or employees, or its bail agents or
35 agencies, shall have any financial affiliation with, indemnify, or receive
36 any compensation from any premium financing company that is
37 licensed to finance any part of a premium for executing a bail bond.¹

38 b. A bail agent ¹[who] or agency that¹ purposely or knowingly
39 executes a bail bond for the release of a defendant from custody or
40 incarceration without collecting the full premium for the bail bond as
41 set forth in subsection a. of this section, ¹[at or]¹ prior to ¹or at¹ the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted May 15, 2003.

² Assembly floor amendments adopted June 23, 2003.

1 time of the ¹[filing] posting¹ of the bail bond with the ¹appropriate¹
2 court or other agency authorized to accept bail bonds, commits a
3 crime of the fourth degree.

4 c. The commissioner, after notice and ¹an opportunity for¹ a
5 hearing, shall suspend the authority of the bail agent ¹[convicted of a
6 violation of this section to execute bail bonds or be employed by or
7 represent in any capacity a surety company that executes bail bonds
8 for] or agency found to have violated this section to negotiate, solicit
9 or sell bail bonds, or be affiliated in any manner with the execution of
10 bail bonds, in this State for up to¹ 90 days for a first violation, ¹up to¹
11 180 days for a second violation, and ¹up to¹ one year for a third
12 violation. For any subsequent violation, the ¹[authority] insurance
13 producer license¹ of the bail agent ¹[to execute bail bonds, or be
14 employed by or represent in any capacity a company that executes bail
15 bonds in this State,] or agency¹ shall be ¹[permanently]¹ revoked ¹for
16 a ten-year period, unless the commissioner finds that there are
17 substantial mitigating factors such that a lesser penalty is appropriate¹.

18 d. In addition to the fines and penalties imposed against a bail
19 agent ¹[convicted of a violation] or agency found to have violated the
20 provisions¹ of subsection a. of this section, the commissioner shall
21 impose a ¹[\$10,000]¹ fine ¹[against] of \$1,000 for a first violation
22 and \$2,000 for each subsequent violation on¹ the bail agent ¹[, the
23 surety company and the agency which licensed or employed the bail
24 agent] , agency or surety company, unless the commissioner finds that
25 there are substantial mitigating factors such that a lesser penalty is
26 appropriate¹.

27 e. For purposes of this section, each violation constitutes a
28 separate offense.]²

29
30 ²[3.] 2.² a. ¹[If a surety company is precluded from writing bail
31 bonds by the Clerk of the Superior Court for failing to satisfy a
32 judgment or order entered against it pursuant to the Rules Governing
33 the Courts of the State of New Jersey, the commissioner shall conduct
34 a hearing within 45 days of the date of the order. The surety
35 company, the agency and the bail agent that executed, posted or was
36 in anyway responsible for the bail bond resulting in the judgment or
37 order, shall be notified at least 25 days prior to the hearing and may
38 attend to present evidence to show the order was entered in error. If
39 the commissioner finds that the order was not entered in error, the
40 license of the surety company, the agency and the bail agent to execute
41 bail bonds, or be affiliated in any manner with the execution of bail
42 bonds, in this State shall be suspended for 90 days for a first violation,
43 180 days for a second violation and one year for a third violation. The
44 suspension shall take effect upon satisfaction of any of the judgments
45 and orders.] Upon receipt of a certification from the Clerk of the

1 Superior Court stating that a bail agent or agency has failed to provide
2 full, accurate and truthful information to the Clerk of the Superior
3 Court as required by section ²[5] ⁴ of this act, or has failed to satisfy
4 a judgment or judgments for forfeited bail, the commissioner shall
5 notify the bail agent or agency that its authority to negotiate, solicit or
6 sell bail bonds, or be affiliated in any manner with the execution of bail
7 bonds in this State shall be temporarily suspended. Upon receipt of a
8 certification from the Clerk of the Superior Court that a surety
9 company has failed to register or provide full, accurate and truthful
10 information to the Clerk of the Superior Court, as required by section
11 ²[5] ⁴ of this act or has failed to satisfy a judgment for forfeited bail,
12 the commissioner may temporarily suspend the surety company's
13 authority to negotiate, solicit or sell bail bonds, or be affiliated in any
14 manner with the execution of bail bonds in this State. The temporary
15 suspensions imposed in accordance with this section shall remain in
16 effect until the Clerk of the Superior Court notifies the commissioner
17 that the surety company or bail agent or agency has properly
18 registered and has provided information in accordance with section
19 ²[5] ⁴ of this act or has satisfied the judgment or judgments for
20 forfeited bail.¹

21 b. In addition to any ¹temporary¹ suspension imposed pursuant to
22 subsection a. of this section, the commissioner ¹, after notice and an
23 opportunity for a hearing,¹ shall impose a fine against the surety
24 company, ¹[the agency, and the]¹ bail agent ¹or agency¹ in ¹[the] an¹
25 amount of ¹up to¹ \$10,000 for a first violation, ¹up to¹ \$25,000 for a
26 second violation and ¹up to¹ \$100,000 for a third or subsequent
27 violation ¹for failure to register or provide full, accurate and truthful
28 information to the Clerk of the Superior Court, as required by section
29 ²[5] ⁴ of this act or for failure to satisfy a judgment or judgments for
30 forfeited bail.¹

31 c. ¹[The surety company, the agency and the bail agent shall be
32 required to pay all judgments or orders entered and fines imposed
33 prior to resuming the execution of bail bonds.] The commissioner
34 shall not restore the surety company's authority to negotiate, solicit or
35 sell bail bonds, or be affiliated in any manner with the execution of bail
36 bonds in this State, until the surety company has demonstrated that it
37 has satisfied all judgments or court orders related to forfeited bail and
38 has paid all fines imposed pursuant to this act.

39 d. Nothing in this act shall be construed to limit, preclude or
40 otherwise adversely affect the commissioner's ability to pursue
41 enforcement actions against the surety company, bail agent or agency
42 resulting from violations of the insurance laws arising from the breach
43 of the duties owed to the courts as provided in subsection a. of this
44 section.¹

45

46 ²[4.] ³ Whenever a surety company, ¹or bail agent¹ or agency

1 acting on its behalf, files an appeal in the Superior Court of New
2 Jersey, Appellate Division, or the Supreme Court of New Jersey, from
3 a judgment or order entered ¹against it by a court to enforce the
4 forfeiture of a bail bond pursuant to the Rules Governing the Courts
5 of the State of New Jersey¹, the surety company shall deposit the full
6 amount of the order or judgment in cash or by certified, cashiers or
7 bank check with the Clerk of the Superior Court or Supreme Court,
8 as appropriate. ²The court may allow the posting of a supersedeas
9 bond, in a form approved by the court, upon the showing of good
10 cause; provided, however, that good cause shall not mean an
11 application by a surety to extend the time to forfeit a bond, to stay
12 payment of a forfeiture of default judgment, or to extend the time to
13 locate a defendant.²

14

15 ¹ ²[5.] 4.² a. A surety company shall register with the Clerk of the
16 Superior Court the name and address of each bail agent or agency
17 authorized by the surety company to write bail. The surety company
18 shall provide written notice to the Clerk of the Superior Court when
19 any bail agent or agency authorized to write bail is terminated or is no
20 longer authorized by the surety company to write bail.

21 b. With respect to each bail agent or agency set forth in subsection
22 a. of this section, the surety company shall disclose the name and
23 address of any bail agent or agency that has provided a guarantee to
24 the surety company for the satisfaction of any forfeited bail or bail
25 forfeiture judgments entered against that surety company written by
26 such bail agent or agency. The registration and disclosure shall
27 include a certification by each listed bail agent or agency stating that
28 the information provided is true and accurate.

29 c. Any surety company, or bail agent or agency, failing to register
30 with the Clerk of the Superior Court, or failing to provide full,
31 accurate and truthful information to the Clerk of the Superior Court,
32 in accordance with the provisions of subsections a. and b. of this
33 section shall be subject to the penalties set forth in section ²[3] 2² of
34 this act.

35 d. In addition to the information required in subsections a. and b.
36 of this section, surety companies and bail agents or agencies shall
37 provide any other information that the Rules Governing the Courts of
38 the State of New Jersey may require.¹

39

40 ²[6.] 5.² Nothing in this act shall be construed to limit, prohibit or
41 otherwise adversely affect the authority of the Supreme Court of New
42 Jersey to adopt rules or issue directives or procedures to preclude a
43 surety company, or its bail agents or agencies, from negotiating,
44 soliciting or selling bail bonds on behalf of any defendant charged with
45 a criminal or quasi-criminal offense pending in the Superior Court or
46 in a municipal court of this State.¹

1 ²[7.] 6.² The commissioner may promulgate rules and regulations
2 in accordance with the provisions of the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
4 the purposes of this act.¹

5

6 ²[8.] 7.² This act shall take effect ¹[on the 180th day following
7 enactment] immediately¹.