



Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-260
Regulation title	Regulations Relating to Bail Enforcement Agents
Action title	Bail Enforcement Agents
Date this document prepared	March 27, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It outlines procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the Board; procedures for conducting investigations; issuing disciplinary action; and revoking, suspending, refusing to renew a license, and provides an appeal process pursuant to the Administrative Process Act.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

Final action was taken on March 12, 2009 by the Criminal Justice Services Board to adopt 2 VAC 20-260 Regulations Relating to Bail Enforcement Agents.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal authority to regulate bail enforcement agents is found in § 9.1-102 (47) of the Virginia Code, effective October 1, 2005, authorizing the Department, under the direction of the Board to “license and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.) of this chapter”. The Board shall adopt regulations that are necessary to ensure respectable, responsible, safe and effective bail enforcement within the Commonwealth pursuant to §9.1-186.2. The Office of the Attorney General has certified that the department has the statutory authority to adopt regulations pursuant to the Code of Virginia § 2.2-4011(A)(ii).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to protect the health, safety, or welfare of citizens. According to the Virginia State Crime Commission, numerous criminal offenses have been perpetuated by individuals within the bail enforcement industry. These acts which include felonious offenses as well as the substantial latitude for actions that bail enforcement agents had under the 1872 Supreme Court Case *Taylor v. Taintor* support the need for oversight and regulations.

The regulation establishes a licensure process to include a fingerprint based background check, compulsory minimum entry-level training standards, and administration of the regulatory system. It authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the Board, to conduct investigations, to issue disciplinary action, and to revoke, to suspend, and to refuse to renew a license.

These procedures are established to ensure respectable, responsible, safe and effective bail enforcement in the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

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Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of implementing the new provisions presented in the final regulations is to provide necessary public protection tasked through existing statutes. Advantages to the public and the Commonwealth are to ensure respectable, responsible, safe and effective bail enforcement in the Commonwealth. The goal of these regulations is to ensure eligible individuals in the bail enforcement industry receive compulsory minimum training, abide by established standards of conduct and ensure that individuals with certain criminal history records, or who are in violation of rules established for public safety are prohibited from performing bail enforcement services.

The establishment of these regulations does not pose any disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
6 VAC 20-260-380		Included new section for forms	Inclusion of required forms for the application process and on-going compliance of the statutes and regulations by individuals applying for or licensed as bail enforcement agents.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
James Darrington, Nightsweep Fugitive Investigations	I am in agreement with the current emergency regulations and the Proposed Regulations and feel that they should be put through as is. Any further changes should be screened vigorously and limited to expanding on what exists rather than any reduction. Thanks.	The Department agrees
Vince Rera Gladiator Bail Bonds	<p>Just as well-as a VA DCJS licensed Surety Bail Agent, I would rather keep Bail Enforcement in house. Meaning, I specialize in performing fugitive recovery for other like Bailbondsmen and they would rather have it just so. Other Bailbondsmen like myself prefer the professionalism of doing business with one another in this capacity for these reasons, we as bailbondsmen as per DCJS regulations are responsible and liable for the actions of people that we employ, being so, I don't need recovery horror stories or negative connotations coming back to haunt or dis-credit my business that I have worked so hard to establish as honorable and professional. Second, the level of understanding as to the potential ramifications of executing a recovery and utilizing BEA's between bailbondsmen is understood. Third, I and most other bail agents shore up our bonds with beaucoup collateral, defendant -co-signer information and bond indemnitor's, that I myself never need a BEA and if I do, I trust myself in the way I write a bailbond and the ability to recover without a doubt. And last but not least, no offense, but after 20 years of college education, training and field experience in criminal justice, frankly, I have no use for BEA's!! If a bail agent needs a BEA that means he wrote what we call in the industry, a premium in mind junk bond, and in these tough economic times we bail agents can't afford to let that happen-my policy is zero paid forfeitures, it cannot happen!! Bottom line, if a bail agent needs to pay a BEA, we have lost the equivalent of the bond premium.</p> <p>Once I receive a 45 day time limit show cause for a FTA bailee, I immediately close hard on the Indemnitor's collateral I have taken, be it tangible property in the form of diamonds, watches, gold teeth, you name it, to cover my recovery efforts. And as a part of my bond, every client understands that if the bailee so much as sneezes wrong before their scheduled court date they know that I won't wait or give them a chance to manifest intent to forfeit my bond, I will Bailpiece/Surety Capias revoke and surrender their ass so fast they won't know what hit them!!</p>	The commenter did not request any change to the Regulations. No response necessary.
Vince Rera Gladiator Bail Bonds	BEA's should also be listed by name and inclusive of their respective DCJS issued license number on the DCJS website just like bailbondsmen are. Hell, I want to know and be able to verify if I'm associating with a licensed and minimum 44E 40hours trained BEA, or	There is no statutory requirement to electronically list bail enforcement agents on the website. Based on the scope of service Bail

	<p>some unlicensed untrained knucklehead gunslinger cowboy imposter with no firearm's endorsement.</p>	<p>Enforcement Agents provide it is believed this could affect the safety of the individual. Bail Bondsmen utilizing the services of a bail enforcement agent may contact the Department to verify licensure.</p>
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Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

This is a new regulation; changes since the proposed stage are outlined above.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Department considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on the bail enforcement industry and are consistent with the regulation of small businesses of other professions.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations indirectly impact the family by providing a regulatory requirement that ensures respectable, responsible, safe and effective bail enforcement within the Commonwealth. This regulatory action will result in verifying the qualifications of the individuals providing bail enforcement services through criminal history records checks and training, to ensure competency and prevent deceptive or unsafe practices towards the family unit.