

2 **SHB 1870** - S COMM AMD (S2746.1)
3 By Committee on Labor & Commerce

4 ADOPTED AS AMENDED BY S3140.1 - 4/14/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature declares that the licensing
8 of bail bond agents should be uniform throughout the state. Therefore,
9 it is the intent of the legislature to preempt any local regulation of
10 bail bond agents, including licensing fees, but not including local
11 business license fees. Nothing in this chapter limits the discretion
12 of the courts of this state to accept or reject a particular surety or
13 recognizance bond in a particular case.

14 NEW SECTION. **Sec. 2.** Unless the context clearly requires
15 otherwise, the definitions in this section apply throughout this
16 chapter.

17 (1) "Department" means the department of licensing.

18 (2) "Director" means the director of licensing.

19 (3) "Collateral or security" means property of any kind given as
20 security to obtain a bail bond.

21 (4) "Bail bond agency" means a business that sells and issues
22 corporate surety bail bonds or that provides security in the form of
23 personal or real property to insure the appearance of a criminal
24 defendant before the courts of this state or the United States.

25 (5) "Qualified agent" means an owner, sole proprietor, partner,
26 manager, officer, or chief operating officer of a corporation who meets
27 the requirements set forth in this chapter for obtaining a bail bond
28 agency license.

29 (6) "Bail bond agent" means a person who is employed by a bail bond
30 agency and engages in the sale or issuance of bail bonds, but does not
31 mean a clerical, secretarial, or other support person who does not
32 participate in the sale or issuance of bail bonds.

33 (7) "Licensee" means a bail bond agency or a bail bond agent or
34 both.

1 NEW SECTION. **Sec. 3.** An applicant must meet the following minimum
2 requirements to obtain a bail bond agent license:

3 (1) Be at least eighteen years of age;

4 (2) Be a citizen or resident alien of the United States;

5 (3) Not have been convicted of a crime in any jurisdiction in the
6 preceding ten years, if the director determines that the applicant's
7 particular crime directly relates to a capacity to perform the duties
8 of a bail bond agent and the director determines that the license
9 should be withheld to protect the citizens of Washington state. If the
10 director shall make a determination to withhold a license because of
11 previous convictions, the determination shall be consistent with the
12 restoration of employment rights act, chapter 9.96A RCW;

13 (4) Be employed by a bail bond agency or be licensed as a bail bond
14 agency; and

15 (5) Pay the required fee.

16 NEW SECTION. **Sec. 4.** (1) In addition to meeting the minimum
17 requirements to obtain a license as a bail bond agent, a qualified
18 agent must meet the following additional requirements to obtain a bail
19 bond agency license:

20 (a) Pass an examination determined by the director to measure the
21 person's knowledge and competence in the bail bond agency business; or

22 (b) Have had at least three years' experience as a manager,
23 supervisor, or administrator in the bail bond business or a related
24 field as determined by the director. A year's experience means not
25 less than two thousand hours of actual compensated work performed
26 before the filing of an application. An applicant shall substantiate
27 the experience by written certifications from previous employers. If
28 the applicant is unable to supply written certifications from previous
29 employers, applicants may offer written certifications from persons
30 other than employers who, based on personal knowledge, can substantiate
31 the employment; and

32 (c) Pay any additional fees as established by the director.

33 (2) An agency license issued under this section may not be assigned
34 or transferred without prior written approval of the director.

35 NEW SECTION. **Sec. 5.** (1) Applications for licenses required under
36 this chapter shall be filed with the director on a form provided by the
37 director. The director may require any information and documentation

1 that reasonably relates to the need to determine whether the applicant
2 meets the criteria, which may include fingerprints.

3 (2) After receipt of an application for a license, the director may
4 conduct an investigation to determine whether the facts set forth in
5 the application are true.

6 NEW SECTION. **Sec. 6.** (1) The director shall issue a bail bond
7 agent license card to each licensed bail bond agent. A bail bond agent
8 shall carry the license card whenever he or she is performing the
9 duties of a bail bond agent and shall exhibit the card upon request.

10 (2) The director shall issue a license certificate to each licensed
11 bail bond agency.

12 (a) Within seventy-two hours after receipt of the license
13 certificate, the licensee shall post and display the certificate in a
14 conspicuous place in the principal office of the licensee within the
15 state.

16 (b) It is unlawful for any person holding a license certificate to
17 knowingly and willfully post the license certificate upon premises
18 other than those described in the license certificate or to materially
19 alter a license certificate.

20 (c) Every advertisement by a licensee that solicits or advertises
21 business shall contain the name of the licensee, the address of record,
22 and the license number as they appear in the records of the director.

23 (d) The licensee shall notify the director within thirty days of
24 any change in the licensee's officers or directors or any material
25 change in the information furnished or required to be furnished to the
26 director.

27 NEW SECTION. **Sec. 7.** (1) The director shall adopt rules
28 establishing prelicense training and testing requirements, which shall
29 include a minimum of four hours of classes. The director may
30 establish, by rule, continuing education requirements for bail bond
31 agents.

32 (2) The director shall consult with the bail bond industry before
33 adopting or amending the prelicensing training or continuing education
34 requirements of this section.

35 (3) The director may appoint an advisory committee consisting of
36 representatives from the bail bond industry and a consumer to assist in
37 the development of rules to implement this chapter.

1 (4) A bail bond agent need not fulfill the prelicensing training
2 requirements of this chapter if he or she, within sixty days prior to
3 July 1, 1994, provides proof to the director that he or she previously
4 has met the training requirements of this chapter or has been employed
5 as a bail bond agent for at least eighteen consecutive months
6 immediately prior to the date of application.

7 NEW SECTION. **Sec. 8.** (1) No bail bond agency license may be
8 issued under the provisions of this chapter unless the qualified agent
9 files with the director a bond, executed by a surety company authorized
10 to do business in this state, in the sum of ten thousand dollars
11 conditioned to recover against the agency and its servants, officers,
12 agents, and employees by reason of its violation of the provisions of
13 section 11 of this act. The bond shall be made payable to the state of
14 Washington, and anyone so injured by the agency or its servants,
15 officers, agents, or employees may bring suit upon the bond in any
16 county in which jurisdiction over the licensee may be obtained. The
17 suit must be brought not later than two years after the failure to
18 return property in accordance with section 11 of this act. If valid
19 claims against the bond exceed the amount of the bond or deposit, each
20 claimant shall be entitled only to a pro rata amount, based on the
21 amount of the claim as it is valid against the bond, without regard to
22 the date of filing of any claim or action.

23 (2) Every licensed bail bond agency must at all times maintain on
24 file with the director the bond required by this section in full force
25 and effect. Upon failure by a licensee to do so, the director shall
26 suspend the licensee's license and shall not reinstate the license
27 until this requirement is met.

28 (3) In lieu of posting a bond, a qualified agent may deposit in an
29 interest-bearing account, ten thousand dollars.

30 (4) The director may waive the bond requirements of this section,
31 in his or her discretion, pursuant to adopted rules.

32 NEW SECTION. **Sec. 9.** (1) The provisions of this chapter relating
33 to the licensing for regulatory purposes of bail bond agents and bail
34 bond agencies are exclusive. No governmental subdivision of this state
35 may enact any laws or rules licensing for regulatory purposes such
36 persons, except as provided in subsections (2) and (3) of this section.

1 (2) This section shall not be construed to prevent a political
2 subdivision of this state from levying a business fee, business and
3 occupation tax, or other tax upon bail bond agencies if such fees or
4 taxes are levied by the political subdivision on other types of
5 businesses within its boundaries.

6 (3) This section shall not be construed to prevent this state or a
7 political subdivision of this state from licensing for regulatory
8 purposes bail bond agencies with respect to activities that are not
9 regulated under this chapter.

10 NEW SECTION. **Sec. 10.** (1) A bail bond agency shall notify the
11 director within thirty days after the death or termination of
12 employment of any employee who is a licensed bail bond agent.

13 (2) A bail bond agency shall notify the director within seventy-two
14 hours upon receipt of information affecting a licensed bail bond
15 agent's continuing eligibility to hold a license under the provisions
16 of this chapter.

17 NEW SECTION. **Sec. 11.** (1) Every qualified agent shall keep
18 adequate records for three years of all collateral and security
19 received, all trust accounts required by this section, and all bail
20 bond transactions handled by the bail bond agency, as specified by
21 rule. The records shall be open to inspection without notice by the
22 director or authorized representatives of the director.

23 (2) Every qualified agent who receives collateral or security is a
24 fiduciary of the property and shall keep adequate records for three
25 years of the receipt, safekeeping, and disposition of the collateral or
26 security. Every qualified agent shall maintain a trust account in a
27 federally insured financial institution located in this state. All
28 moneys, including cash, checks, money orders, wire transfers, and
29 credit card sales drafts, received as collateral or security or
30 otherwise held for a bail bond agency's client shall be deposited in
31 the trust account not later than the third banking day following
32 receipt of the funds or money. A qualified agent shall not in any way
33 encumber the corpus of the trust account or commingle any other moneys
34 with moneys properly maintained in the trust account. Each qualified
35 agent required to maintain a trust account shall report annually under
36 oath to the director the account number and balance of the trust
37 account, and the name and address of the institution that holds the

1 trust account, and shall report to the director within ten business
2 days whenever the trust account is changed or relocated or a new trust
3 account is opened.

4 (3) Whenever a bail bond is exonerated by the court, the bail bond
5 agency shall, within five business days after written notification of
6 exoneration and upon demand, return all collateral or security to the
7 person entitled thereto.

8 NEW SECTION. **Sec. 12.** The following acts are prohibited and
9 constitute grounds for disciplinary action or denial, suspension, or
10 revocation of any license under this chapter, as deemed appropriate by
11 the director:

12 (1) Knowingly violating any of the provisions of this chapter or
13 the rules adopted under this chapter;

14 (2) Knowingly making a material misstatement or omission in the
15 application for or renewal of a license;

16 (3) Failing to meet the qualifications set forth in sections 3 and
17 4 of this act;

18 (4) Conviction of a gross misdemeanor or felony or the commission
19 of any act involving moral turpitude, dishonesty, or corruption whether
20 the act constitutes a crime or not. If the act constitutes a crime,
21 conviction in a criminal proceeding is not a condition precedent to
22 disciplinary action. Upon such a conviction, however, the judgment and
23 sentence is conclusive evidence at the ensuing disciplinary hearing of
24 the guilt of the license holder or applicant of the crime described in
25 the indictment or information, and of the person's violation of the
26 statute on which it is based. For the purposes of this section,
27 conviction includes all instances in which a plea of guilty or nolo
28 contendere is the basis for the conviction and all proceedings in which
29 the sentence has been deferred or suspended. Nothing in this section
30 abrogates rights guaranteed under chapter 9.96A RCW;

31 (5) Advertising that is false, fraudulent, or misleading;

32 (6) Incompetence or negligence that results in injury to a person
33 or that creates an unreasonable risk that a person may be harmed;

34 (7) Suspension, revocation, or restriction of the individual's
35 license to practice the profession by competent authority in any state,
36 federal, or foreign jurisdiction, a certified copy of the order,
37 stipulation, or agreement being conclusive evidence of the revocation,
38 suspension, or restriction;

- 1 (8) Failure to cooperate with the director by not:
- 2 (a) Furnishing any necessary papers or documents requested by the
3 director for purposes of conducting an investigation for disciplinary
4 action, denial, suspension, or revocation of a license under this
5 chapter;
- 6 (b) Furnishing in writing a full and complete explanation covering
7 the matter contained in a complaint filed with the department; or
- 8 (c) Responding to subpoenas issued by the director, whether or not
9 the recipient of the subpoena is the accused in the proceeding;
- 10 (9) Failure to comply with an order issued by the director or an
11 assurance of discontinuance entered into with the director;
- 12 (10) Aiding or abetting an unlicensed person to practice if a
13 license is required;
- 14 (11) Knowingly committing, or being a party to, any material fraud,
15 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
16 or device whereby any other person lawfully relies upon the word,
17 representation, or conduct of the licensee;
- 18 (12) Failure to adequately supervise employees to the extent that
19 the client funds are at risk;
- 20 (13) Interference with an investigation or disciplinary proceeding
21 by willful misrepresentation of facts before the director or the
22 director's authorized representative, or by the use of threats or
23 harassment against any client or witness to prevent them from providing
24 evidence in a disciplinary proceeding or any other legal action;
- 25 (14) Assigning or transferring any license issued pursuant to the
26 provisions of this chapter, except as provided in section 4 of this
27 act;
- 28 (15) Conversion of any money or contract, deed, note, mortgage, or
29 other evidence of title, to his or her own use or to the use of his or
30 her principal or of any other person, when delivered to him or her in
31 trust or on condition, in violation of the trust or before the
32 happening of the condition; and failure to return any money or
33 contract, deed, note, mortgage, or other evidence of title within
34 thirty days after the owner is entitled to possession, and makes demand
35 for possession, shall be prima facie evidence of conversion;
- 36 (16) Failing to keep records, maintain a trust account, or return
37 collateral or security, as required by section 11 of this act;
- 38 (17) Any conduct in a bail bond transaction which demonstrates bad
39 faith, dishonesty, or untrustworthiness; or

1 (18) Violation of an order to cease and desist that is issued by
2 the director under this chapter.

3 NEW SECTION. **Sec. 13.** The director has the following authority in
4 administering this chapter:

5 (1) To adopt, amend, and rescind rules as deemed necessary to carry
6 out this chapter;

7 (2) To issue an order providing for one or any combination of the
8 following upon violation or violations of this chapter: Denying,
9 suspending, or revoking a license; assessing monetary penalties;
10 restricting or limiting practice; complying with conditions of
11 probation for a designated period of time; making restitution to the
12 person harmed by the licensee; or other corrective action;

13 (3) To issue subpoenas and administer oaths in connection with an
14 investigation, hearing, or proceeding held under this chapter;

15 (4) To take or cause depositions to be taken and use other
16 discovery procedures as needed in an investigation, hearing, or
17 proceeding held under this chapter;

18 (5) To compel attendance of witnesses at hearings;

19 (6) To establish fees by rule under RCW 43.24.086 and chapter 34.05
20 RCW;

21 (7) To take emergency action ordering summary suspension of a
22 license, or restriction or limitation of the licensee's practice
23 pending proceedings by the director;

24 (8) To use the office of administrative hearings as authorized in
25 chapter 34.12 RCW to conduct hearings. However, the director or the
26 director's designee shall make the final decision in the hearing;

27 (9) To enter into contracts for professional services determined to
28 be necessary for adequate enforcement of this chapter;

29 (10) To adopt standards of professional conduct or practice;

30 (11) In the event of a finding of unprofessional conduct by an
31 applicant or license holder, to impose sanctions against an applicant
32 or license holder as provided by this chapter;

33 (12) To enter into an assurance of discontinuance in lieu of
34 issuing a statement of charges or conducting a hearing. The assurance
35 shall consist of a statement of the law in question and an agreement to
36 not violate the stated provision. The applicant or license holder
37 shall not be required to admit to any violation of the law, and the

1 assurance shall not be construed as such an admission. Violation of an
2 assurance under this subsection is grounds for disciplinary action;

3 (13) To designate individuals authorized to sign subpoenas and
4 statements of charges; and

5 (14) To employ such investigative, administrative, and clerical
6 staff as necessary for the enforcement of this chapter.

7 NEW SECTION. **Sec. 14.** Any person may submit a written complaint
8 to the department charging a license holder or applicant with
9 unprofessional conduct and specifying the grounds for the charge. If
10 the director determines that the complaint merits investigation, or if
11 the director has reason to believe, without a formal complaint, that a
12 license holder or applicant may have engaged in unprofessional conduct,
13 the director shall investigate to determine if there has been
14 unprofessional conduct. A person who files a complaint under this
15 section in good faith is immune from suit in any civil action related
16 to the filing or contents of the complaint.

17 NEW SECTION. **Sec. 15.** (1) If the director determines, upon
18 investigation, that there is reason to believe a violation of this
19 chapter has occurred, a statement of charges shall be prepared and
20 served upon the license holder or applicant and notice of this action
21 given to the owner or qualified agent of the employing bail bond
22 agency. The statement of charges shall be accompanied by a notice that
23 the license holder or applicant may request a hearing to contest the
24 charges. The license holder or applicant must file a request for
25 hearing with the department within twenty days after being served the
26 statement of charges. The failure to request a hearing constitutes a
27 default, whereupon the director may enter an order under RCW 34.05.440.

28 (2) If a hearing is requested, the time of the hearing shall be
29 scheduled but the hearing shall not be held earlier than thirty days
30 after service of the charges upon the license holder or applicant. A
31 notice of hearing shall be issued at least twenty days prior to the
32 hearing, specifying the time, date, and place of the hearing.

33 NEW SECTION. **Sec. 16.** The procedures governing adjudicative
34 proceedings before agencies under chapter 34.05 RCW, the administrative
35 procedure act, shall govern all hearings before the director.

1 NEW SECTION. **Sec. 17.** If an order for payment of a monetary
2 penalty is made as a result of a hearing and timely payment is not made
3 as directed in the final order, the director may enforce the order for
4 payment in the superior court in the county in which the hearing was
5 held. This right of enforcement shall be in addition to any other
6 rights the director may have as to a licensee ordered to pay a monetary
7 penalty but shall not be construed to limit a licensee's ability to
8 seek judicial review.

9 In an action for enforcement of an order of payment of a monetary
10 penalty, the director's order is conclusive proof of the validity of
11 the order of payment of a penalty and the terms of payment.

12 NEW SECTION. **Sec. 18.** (1) The director shall investigate
13 complaints concerning practice by unlicensed persons of a profession or
14 business for which a license is required by this chapter. In the
15 investigation of the complaints, the director has the same authority as
16 provided the director under section 15 of this act. The director shall
17 issue a cease and desist order to a person after notice and hearing and
18 upon a determination that the person has violated this subsection. If
19 the director makes a written finding of fact that the public interest
20 will be irreparably harmed by delay in issuing an order, the director
21 may issue a temporary cease and desist order. The cease and desist
22 order shall not relieve the person practicing or operating a business
23 without a license from criminal prosecution therefor, but the remedy of
24 a cease and desist order shall be in addition to any criminal
25 liability. The cease and desist order is conclusive proof of
26 unlicensed practice and may be enforced under RCW 7.21.060. This
27 method of enforcement of the cease and desist order may be used in
28 addition to, or as an alternative to, any provisions for enforcement of
29 agency orders.

30 (2) The attorney general, a county prosecuting attorney, the
31 director, or any person may, in accordance with the law of this state
32 governing injunctions, maintain an action in the name of this state to
33 enjoin any person practicing a profession or business for which a
34 license is required by this chapter without a license from engaging in
35 such practice or operating such business until the required license is
36 secured. However, the injunction shall not relieve the person
37 practicing or operating a business without a license from criminal

1 prosecution therefor, but the remedy by injunction shall be in addition
2 to any criminal liability.

3 (3) After June 30, 1994, any person who performs the functions and
4 duties of a bail bond agent in this state without being licensed in
5 accordance with the provisions of this chapter, or any person
6 presenting or attempting to use as his or her own the license of
7 another, or any person who gives false or forged evidence of any kind
8 to the director in obtaining a license, or any person who falsely
9 impersonates any other licensee, or any person who attempts to use an
10 expired or revoked license, or any person who violates any of the
11 provisions of this chapter is guilty of a gross misdemeanor.

12 (4) After January 1, 1994, a person is guilty of a gross
13 misdemeanor if he or she owns or operates a bail bond agency in this
14 state without first obtaining a bail bond agency license.

15 (5) After June 30, 1994, the owner or qualified agent of a bail
16 bond agency is guilty of a gross misdemeanor if he or she employs any
17 person to perform the duties of a bail bond agent without the employee
18 having in his or her possession a permanent bail bond agent license
19 issued by the department.

20 (6) All fees, fines, forfeitures, and penalties collected or
21 assessed by a court because of a violation of this section shall be
22 remitted to the department.

23 NEW SECTION. **Sec. 19.** A person or business that violates an
24 injunction issued under this chapter shall pay a civil penalty, as
25 determined by the court, of not more than twenty-five thousand dollars,
26 which shall be paid to the department. For the purpose of this
27 section, the superior court issuing any injunction shall retain
28 jurisdiction.

29 NEW SECTION. **Sec. 20.** The director or individuals acting on the
30 director's behalf are immune from suit in any action, civil or
31 criminal, based on disciplinary proceedings or other official acts
32 performed in the course of their duties in the administration and
33 enforcement of this chapter.

34 NEW SECTION. **Sec. 21.** The director, in implementing and
35 administering the provisions of this chapter, shall act in accordance
36 with the administrative procedure act, chapter 34.05 RCW.

