

HOUSE BILL ANALYSIS

HB 2533

Brief Description: Changing provisions relating to bail enforcement agents.

Sponsors: Carrell, Sheahan, Costa, O'Brien, Boldt, Zellinsky, Backlund, Quall, Talcott, Delvin, Robertson, Wensman, Poulsen, Benson, K. Schmidt, D. Sommers, Mielke, Pennington, Lambert, Sterk, Bush, Cody, L. Thomas, Mitchell, Koster, Lantz, Smith, Kastama, Thompson, Dunshee, McCune and Mulliken.

Hearing: January 29, 1998

BACKGROUND:

The Department of Licensing administers and enforces a regulatory program to license and oversee bail bond agents and bail bond businesses. The Director of the Department of Licensing is responsible for licensing bail bond agents and businesses, developing examinations for licensees, and developing pre licensing education requirements. The department also has rule making and enforcement authority.

A person wishing to become a bail bond agent must be at least eighteen years of age, and a citizen or resident alien with no convictions that relate to the duties of a bail bond agent within a 10-year period before his or her application. An applicant must be employed by a bail bond business, and pay the required fee to the Department. Besides meeting the minimum requirements for a bail bond agent's license, an applicant for a license to operate a bail bond business must pass an examination, or have at least three years' supervisory or managerial experience in the bail bond business. An additional fee must be paid. A bail bond business may not transfer or assign its license without the approval of the Director of Licensing.

The Director conducts a background investigation, and issues a license card to each qualified applicant. Licensed bail bond agents must carry the license card when performing bail bond duties and must present the card upon request. The director issues a license certificate to a bail bond business that must be conspicuously displayed by the business.

A bond of \$10,000 is required with each application for a bail bond business license. In lieu of posting the bond a principal of the bail bond business may deposit \$10,000 in an interest-bearing account.

The director may investigate complaints for unprofessional conduct and impose sanctions for violations of the licensing requirements. The Department is authorized to assess administrative penalties along with license suspension, revocation, or disciplinary action. The Director may suspend or revoke a license, assess a monetary penalty, restrict or limit the agent's practice, and take other corrective action against agents who violate any of the enumerated requirements for holding a license. Specific violations of the statute may result in a person's conviction of a gross misdemeanor.

Among the prohibited practices by bail bond agents are failure to maintain records and failure to place money and other similar security in a trust account.

A criminal defendant has a right to have bail, except in certain cases. A defendant who is granted bail may contact a bail bond agent in order for the agent to post a bond with the court on the defendant's behalf. Upon the failure of the defendant to appear in court, the court will demand the bail bond agent surrender the defendant, or pay the face amount of the bond. Bail bond agents often hire bail enforcement agents to apprehend and surrender the defendant. These agents are sometimes referred to as bounty hunters— or fugitive recovery agents.—

There are no Washington statutes regulating "bounty hunters" or "fugitive recovery agents". An agent's authority to apprehend and surrender a defendant is based in common law. An agent's authority to recapture a fugitive is based on the private undertaking in the bond contract, not on criminal procedure. "Bounty hunters" or "fugitive recovery agents" are generally not considered state actors and are not subject to the same constitutional provisions as police officers and other state agents. Bail enforcement agents are subject to Washington's criminal and civil laws.

SUMMARY OF BILL:

It is the intent of the legislature that bail enforcement agents meet certain minimum qualifications before they can perform their duties.

A bail enforcement agent— is a person who has a bail enforcement agent certificate issued by the Department of Licensing, and who receives compensation for apprehending defendants.

An applicant for a bail enforcement agent certificate must be at least twenty-one years of age, and a citizen or resident alien with no convictions that relate to the duties of a bail enforcement agent within a 10-year period before his or her application, have a firearm certificate, and a concealed pistol license. An applicant may not be a law enforcement

officer. Applicants for a bail enforcement agent's certificate or renewal of a certificate must submit a bond of \$10,000. The bond must accompany the application. Instead of the bond, a bail enforcement agent may deposit \$10,000 in an interest-bearing account.

An application for a certificate must be filed with the Director of the Department of Licensing, who must investigate the applicant. The Director may require fingerprints as part of the investigation. A bail enforcement agent's certificate is valid for two years from the date of issue. A biannual exam is required for re certification. The Director may investigate an applicant for re certification. The firearm certificate must be renewed annually.

A bail enforcement agent, bail bond agent, or qualified agent must notify local law enforcement agencies before a defendant is apprehended. During a planned forced entry the words BAIL ENFORCEMENT AGENT- must be on an agent's vest, bib or shirt. Planned forced entry- means the apprehension of a defendant by forcibly entering a building without the occupant's consent when a bail enforcement agent knows a defendant is hiding in a building. It does not include situations where a bail enforcement agent is in hot pursuit or where other exigent circumstances exist.

Law enforcement agencies must, when reasonable, provide bail enforcement agents or bail bond agents with a photograph of the defendant if one was taken at the time of arrest.

A bail enforcement agent from another state may operate in Washington for up to 30 days if he or she obtains a temporary certificate from the department, or works under the direct supervision of a Washington-certified bail enforcement agent. Out-of-state bail enforcement agents may not carry a firearm while performing his or her duties, and a Washington-certified bail enforcement agent must be physically present during the apprehension of a defendant.

The department has the authority to investigate complaints against a bail enforcement agent, and to suspend, or revoke an agent's certificate for violations of the statute. It is a gross misdemeanor to act as a bail enforcement agent without a certificate, or to give false information when applying for a certificate. Failure to annually renew an agent's firearm certificate is a violation of the statute.

A bail bond agent or agency, or a qualified agent is liable for the acts of the bail enforcement agent during a defendant's apprehension and surrender.

RULES AUTHORITY: The bill does contain provisions addressing the rule making powers of an agency.

FISCAL NOTE: Requested on January 1-22-98.

EFFECTIVE DATE: Ninety days after adjournment of session in which bill is passed.