

SHB 2313 - S COMM AMD
By Committee on Judiciary

ADOPTED 03/11/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that bail bond
4 agents and bail bond recovery agents serve a necessary and important
5 purpose in the criminal justice system by locating, apprehending, and
6 surrendering fugitive criminal defendants. The legislature also
7 recognizes that locating, apprehending, and surrendering fugitives
8 requires special skills and expertise; that bail bond agents and bail
9 bond recovery agents are often required to perform their duties under
10 stressful and demanding conditions; and that it serves the public
11 interest to have qualified people performing such essential functions.
12 Therefore, bail bond agencies that use the services of bail bond
13 recovery agents must, in the interest of public safety, use bail bond
14 recovery agents who possess the knowledge and competence necessary for
15 the job.

16 **Sec. 2.** RCW 18.185.010 and 2000 c 171 s 40 are each amended to
17 read as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

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

22 (3) "Commission" means the criminal justice training commission.

23 (4) "Collateral or security" means property of any kind given as
24 security to obtain a bail bond.

25 ~~((4))~~ (5) "Bail bond agency" means a business that sells and
26 issues corporate surety bail bonds or that provides security in the
27 form of personal or real property to ~~((insure))~~ ensure the appearance
28 of a criminal defendant before the courts of this state or the United
29 States.

1 ~~((+5))~~ (6) "Qualified agent" means an owner, sole proprietor,
2 partner, manager, officer, or chief operating officer of a corporation
3 who meets the requirements set forth in this chapter for obtaining a
4 bail bond agency license.

5 ~~((+6))~~ (7) "Bail bond agent" means a person who is employed by a
6 bail bond agency and engages in the sale or issuance of bail bonds, but
7 does not mean a clerical, secretarial, or other support person who does
8 not participate in the sale or issuance of bail bonds.

9 ~~((+7))~~ (8) "Licensee" means a bail bond agency ~~((or))~~, a bail bond
10 agent ~~((or both))~~, a qualified agent, or a bail bond recovery agent.

11 ~~((+8))~~ (9) "Branch office" means any office physically separated
12 from the principal place of business of the licensee from which the
13 licensee or an employee or ~~((agents conduct))~~ agent of the licensee
14 conducts any activity meeting the criteria of a bail bond agency.

15 (10) "Bail bond recovery agent" means a person who is under
16 contract with a bail bond agent to receive compensation, reward, or any
17 other form of lawful consideration for locating, apprehending, and
18 surrendering a fugitive criminal defendant for whom a bail bond has
19 been posted. "Bail bond recovery agent" does not include a general
20 authority Washington peace officer or a limited authority Washington
21 peace officer.

22 (11) "Contract" means a written agreement between a bail bond agent
23 or qualified agent and a bail bond recovery agent for the purpose of
24 locating, apprehending, and surrendering a fugitive criminal defendant
25 in exchange for lawful consideration.

26 (12) "Planned forced entry" means a premeditated forcible entry
27 into a dwelling, building, or other structure without the occupant's
28 knowledge or consent for the purpose of apprehending a fugitive
29 criminal defendant subject to a bail bond. "Planned forced entry" does
30 not include situations where, during an imminent or actual chase or
31 pursuit of a fleeing fugitive criminal defendant, or during a casual or
32 unintended encounter with the fugitive, the bail bond recovery agent
33 forcibly enters into a dwelling, building, or other structure without
34 advanced planning.

35 NEW SECTION. Sec. 3. A new section is added to chapter 18.185 RCW
36 to read as follows:

1 An applicant must meet the following requirements to obtain a bail
2 bond recovery agent license:

3 (1) Submit a fully completed application that includes proper
4 identification on a form prescribed by the director;

5 (2) Pass an examination determined by the director to measure his
6 or her knowledge and competence in the bail recovery business;

7 (3) Be at least twenty-one years old;

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

9 (5) Not have been convicted of a crime in any jurisdiction, if the
10 director determines that the applicant's particular crime directly
11 relates to a capacity to perform the duties of a bail bond recovery
12 agent, and that the license should be withheld to protect the citizens
13 of Washington state. The director shall make the director's
14 determination to withhold a license because of previous convictions
15 notwithstanding the restoration of employment rights act, chapter 9.96A
16 RCW;

17 (6) Submit a receipt showing payment for a background check through
18 the Washington state patrol and the federal bureau of investigation;

19 (7) Have a current firearms certificate issued by the commission if
20 carrying a firearm in the performance of his or her duties as a bail
21 bond recovery agent;

22 (8)(a) Have a current license to carry a concealed pistol if
23 carrying a firearm in the performance of his or her duties as a bail
24 bond recovery agent;

25 (b) A resident alien must provide a copy of his or her alien
26 firearm license if carrying a firearm in the performance of his or her
27 duties as a bail bond recovery agent; and

28 (9)(a) Pay the required nonrefundable fee for each application for
29 a bail bond recovery agent license;

30 (b) A bail bond agent or qualified agent who wishes to perform the
31 duties of a bail bond recovery agent must first obtain a bail bond
32 recovery agent endorsement to his or her bail bond agent or agency
33 license in order to act as a bail bond recovery agent, and pay the
34 required nonrefundable fee for each application for a bail bond
35 recovery agent endorsement.

1 **Sec. 4.** RCW 18.185.040 and 1993 c 260 s 5 are each amended to read
2 as follows:

3 (1) Applications for licenses required under this chapter shall be
4 filed with the director on a form provided by the director. The
5 director may require any information and documentation that reasonably
6 relates to the need to determine whether the applicant meets the
7 criteria, (~~which may include~~) including fingerprints.

8 (2) (~~After receipt of an application for a license, the director
9 may conduct an investigation to determine whether the facts set forth
10 in the application are true.~~) Applicants for licensure or endorsement
11 as a bail bond recovery agent must complete a records check through the
12 Washington state patrol criminal identification system and through the
13 federal bureau of investigation at the applicant's expense. Such
14 record check shall include a fingerprint check using a Washington state
15 patrol approved fingerprint card. The Washington state patrol shall
16 forward the fingerprints of applicants to the federal bureau of
17 investigation for a national criminal history records check. The
18 director may accept proof of a recent national crime information
19 center/III criminal background report or any national or interstate
20 criminal background report in addition to fingerprints to accelerate
21 the licensing and endorsement process. The director is authorized to
22 periodically perform a background investigation of licensees to
23 identify criminal convictions subsequent to the renewal of a license or
24 endorsement.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.185 RCW
26 to read as follows:

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

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

35 (3) A bail bond recovery agent need not fulfill the prelicensing

1 training requirements of this chapter if he or she, within sixty days
2 prior to July 1, 2005, provides proof to the director that he or she
3 previously has met the training requirements of this chapter.

4 (4) The director, or the director's designee, with the advice of
5 representatives of the bail bond industry and associations, law
6 enforcement agencies and associations, and prosecutors' associations,
7 shall adopt rules establishing prelicense training and testing
8 requirements and shall establish minimum exam standards necessary for
9 a bail bond recovery agent to qualify for licensure or endorsement.

10 (5) The standards shall be limited to the following:

11 (a) A minimum level of education or experience appropriate for
12 performing the duties of a bail bond recovery agent;

13 (b) A minimum level of knowledge in relevant areas of criminal and
14 civil law;

15 (c) A minimum level of knowledge regarding the appropriate use of
16 force and different degrees of the use of force; and

17 (d) Adequate training of the use of firearms from the criminal
18 justice training commission or from an instructor who has been trained
19 or certified by the criminal justice training center.

20 (6) The legislature does not intend, and nothing in this chapter
21 shall be construed to restrict or limit in any way the powers of bail
22 bond agents as recognized in and derived from the United States Supreme
23 Court case of *Taylor v. Taintor*, 16 Wall. 366 (1872).

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.185 RCW
25 to read as follows:

26 (1) Each fugitive criminal defendant to be recovered will be
27 treated as an individual contract between the bail bond agent and the
28 bail bond recovery agent. A bail bond agent shall provide a bail bond
29 recovery agent a copy of each individual contract. A bail bond
30 recovery agent must carry, in addition to the license issued by the
31 department, a copy of the contract and, if requested, must present a
32 copy of the contract and the license to the fugitive criminal
33 defendant, the owner or manager of the property in which the agent
34 entered in order to locate or apprehend the fugitive, other residents,
35 if any, of the residence in which the agent entered in order to locate
36 or apprehend the fugitive, and to the local law enforcement agency or

1 officer. If presenting a copy of the contract or the license at the
2 time of the request would unduly interfere with the location or
3 apprehension of the fugitive, the agent shall present the copy of the
4 contract or the license within a reasonable period of time after the
5 exigent circumstances expire.

6 (2) The director, or the director's designee, with the advice of
7 the bail bond industry and associations, law enforcement agencies and
8 associations, and prosecutors' associations shall develop a format for
9 the contract. At a minimum, the contract must include the following:

10 (a) The name, address, phone number, and license number of the bail
11 bond agency or bail bond agent contracting with the bail bond recovery
12 agent;

13 (b) The name and license number of the bail bond recovery agent;
14 and

15 (c) The name, last known address, and phone number of the fugitive.

16 **Sec. 7.** RCW 18.185.090 and 1993 c 260 s 10 are each amended to
17 read as follows:

18 (1) A bail bond agency shall notify the director within thirty days
19 after the death or termination of employment of any employee who is a
20 licensed bail bond agent.

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

25 (3) A bail bond agent or bail bond recovery agent shall notify the
26 director within seventy-two hours upon receipt of information affecting
27 the bail bond recovery agent's continuing eligibility to hold a bail
28 bond recovery agent's license under the provisions of this chapter.

29 (4) A bail bond agent or bail bond recovery agent shall notify the
30 local law enforcement agency whenever the bail bond recovery agent
31 discharges his or her firearm while on duty, other than on a supervised
32 firearms range. The notification must be made within ten business days
33 of the date the firearm is discharged.

34 **Sec. 8.** RCW 18.185.100 and 1996 c 242 s 3 are each amended to read
35 as follows:

1 (1) Every qualified agent shall keep adequate records for three
2 years of all collateral and security received, all trust accounts
3 required by this section, and all bail bond transactions handled by the
4 bail bond agency, as specified by rule. The records shall be open to
5 inspection without notice by the director or authorized representatives
6 of the director.

7 (2) Every qualified agent who receives collateral or security is a
8 fiduciary of the property and shall keep adequate records for three
9 years of the receipt, safekeeping, and disposition of the collateral or
10 security. Every qualified agent shall maintain a trust account in a
11 federally insured financial institution located in this state. All
12 moneys, including cash, checks, money orders, wire transfers, and
13 credit card sales drafts, received as collateral or security or
14 otherwise held for a bail bond agency's client shall be deposited in
15 the trust account not later than the third banking day following
16 receipt of the funds or money. A qualified agent shall not in any way
17 encumber the corpus of the trust account or commingle any other moneys
18 with moneys properly maintained in the trust account. Each qualified
19 agent required to maintain a trust account shall report annually under
20 oath to the director the account number and balance of the trust
21 account, and the name and address of the institution that holds the
22 trust account, and shall report to the director within ten business
23 days whenever the trust account is changed or relocated or a new trust
24 account is opened.

25 (3) Whenever a bail bond is exonerated by the court, the qualified
26 agent shall, within five business days after written notification of
27 exoneration (~~(and upon written demand)~~), return all collateral or
28 security to the person entitled thereto.

29 (4) Records of contracts for fugitive apprehension must be retained
30 by the bail bond agent and by the bail bond recovery agent for a period
31 of three years.

32 **Sec. 9.** RCW 18.185.110 and 2002 c 86 s 251 are each amended to
33 read as follows:

34 In addition to the unprofessional conduct described in RCW
35 18.235.130, the following conduct, acts, or conditions constitute
36 unprofessional conduct:

- 1 (1) Violating any of the provisions of this chapter or the rules
2 adopted under this chapter;
- 3 (2) Failing to meet the qualifications set forth in RCW 18.185.020
4 and 18.185.030;
- 5 (3) Knowingly committing, or being a party to, any material fraud,
6 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
7 or device whereby any other person lawfully relies upon the word,
8 representation, or conduct of the licensee. However, this subsection
9 (3) does not prevent a bail bond recovery agent from using any pretext
10 to locate or apprehend a fugitive criminal defendant or gain any
11 information regarding the fugitive;
- 12 (4) Assigning or transferring any license issued pursuant to the
13 provisions of this chapter, except as provided in RCW 18.185.030;
- 14 (5) Conversion of any money or contract, deed, note, mortgage, or
15 other evidence of title, to his or her own use or to the use of his or
16 her principal or of any other person, when delivered to him or her in
17 trust or on condition, in violation of the trust or before the
18 happening of the condition; and failure to return any money or
19 contract, deed, note, mortgage, or other evidence of title within
20 thirty days after the owner is entitled to possession, and makes demand
21 for possession, shall be prima facie evidence of conversion;
- 22 (6) Failing to keep records, maintain a trust account, or return
23 collateral or security, as required by RCW 18.185.100;
- 24 (7) Any conduct in a bail bond transaction which demonstrates bad
25 faith, dishonesty, or untrustworthiness; ((~~or~~))
- 26 (8) Violation of an order to cease and desist that is issued by the
27 director under this chapter;
- 28 (9) Wearing, displaying, holding, or using badges not approved by
29 the department;
- 30 (10) Making any statement that would reasonably cause another
31 person to believe that the bail bond recovery agent is a sworn peace
32 officer;
- 33 (11) Failing to carry a copy of the contract or to present a copy
34 of the contract as required under section 6(1) of this act;
- 35 (12) Using the services of an unlicensed bail bond recovery agent
36 or using the services of a bail bond recovery agent without issuing the
37 proper contract;

1 (13) Misrepresenting or knowingly making a material misstatement or
2 omission in the application for a license;

3 (14) Using the services of a person performing the functions of a
4 bail bond recovery agent who has not been licensed by the department as
5 required by this chapter; or

6 (15) Performing the functions of a bail bond recovery agent without
7 being both (a) licensed under this chapter or supervised by a licensed
8 bail bond recovery agent under section 11 of this act; and (b) under
9 contract with a bail bond agent.

10 NEW SECTION. Sec. 10. A new section is added to chapter 18.185
11 RCW to read as follows:

12 (1) A person may not perform the functions of a bail bond recovery
13 agent unless the person is licensed by the department under this
14 chapter.

15 (2) A bail bond agent may contract with a person to perform the
16 functions of a bail bond recovery agent. Before contracting with the
17 bail bond recovery agent, the bail bond agent must check the license
18 issued by the department under this chapter. The requirements
19 established by the department under this chapter do not prevent the
20 bail bond agent from imposing additional requirements that the bail
21 bond agent considers appropriate.

22 (3) A contract entered into under this chapter is authority for the
23 person to perform the functions of a bail bond recovery agent as
24 specifically authorized by the contract and in accordance with
25 applicable law. A contract entered into by a bail bond agent with a
26 bail bond recovery agent is not transferable by the bail bond recovery
27 agent to another bail bond recovery agent.

28 (4) Whenever a person licensed by the department as a bail bond
29 recovery agent is engaged in the performance of the person's duties as
30 a bail bond recovery agent, the person must carry a copy of the
31 license.

32 (5) A license or endorsement issued by the department under this
33 chapter is valid from the date the license or endorsement is issued
34 until its expiration date unless it is suspended or revoked by the
35 department prior to its expiration date.

1 (6) No person may perform the functions of a bail bond recovery
2 agent after December 31, 2005, unless the person has first complied
3 with the provisions of this chapter.

4 (7) Nothing in this chapter is meant to prevent a bail bond agent
5 from contacting a fugitive criminal defendant for the purpose of
6 requesting the surrender of the fugitive, or from accepting the
7 voluntary surrender of the fugitive.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 18.185
9 RCW to read as follows:

10 A bail bond recovery agent from another state who is not licensed
11 under this chapter may not perform the functions of a bail bond
12 recovery agent in this state unless the agent is working under the
13 direct supervision of a licensed bail bond recovery agent.

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.185
15 RCW to read as follows:

16 (1) Before a bail bond recovery agent may apprehend a person
17 subject to a bail bond in a planned forced entry, the bail bond
18 recovery agent must notify an appropriate law enforcement agency in the
19 local jurisdiction in which the apprehension is expected to occur.
20 Notification must include, at a minimum: The name of the defendant;
21 the address, or the approximate location if the address is
22 undeterminable, of the dwelling, building, or other structure where the
23 planned forced entry is expected to occur; the name of the bail bond
24 recovery agent; the name of the contracting bail bond agent; and the
25 alleged offense or conduct the defendant committed that resulted in the
26 issuance of a bail bond.

27 (2) During the actual planned forced entry, a bail bond recovery
28 agent:

29 (a) Shall wear a shirt, vest, or other garment with the words "BAIL
30 BOND RECOVERY AGENT" displayed in at least two-inch-high reflective
31 print letters across the front and back of the garment and in a
32 contrasting color to that of the garment; and

33 (b) May display a badge approved by the department with the words
34 "BAIL BOND RECOVERY AGENT" prominently displayed.

1 **Sec. 13.** RCW 18.185.170 and 2002 c 86 s 254 are each amended to
2 read as follows:

3 (1) (~~After June 30, 1994,~~) Any person who performs the functions
4 and 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 (2) (~~After January 1, 1994,~~) A person is guilty of a gross
13 misdemeanor if ((he or she)) the person owns or operates a bail bond
14 agency in this state without first obtaining a bail bond agency
15 license.

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

22 (4) After December 31, 2005, a person is guilty of a gross
23 misdemeanor if the person:

24 (a) Performs the functions of a bail bond recovery agent without
25 first obtaining a license from the department and entering into a
26 contract with a bail bond agent as required by this chapter; or, in the
27 case of a bail bond recovery agent from another state, the person
28 performs the functions of a bail bond recovery agent without operating
29 under the direct supervision of a licensed bail bond recovery agent as
30 required by this chapter; or

31 (b) Conducts a planned forced entry without first complying with
32 the requirements of this chapter."

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1 On page 1, beginning on line 1 of the title, after "agents;" strike
2 the remainder of the title and insert "amending RCW 18.185.010,
3 18.185.040, 18.185.090, 18.185.100, 18.185.110, and 18.185.170; adding
4 new sections to chapter 18.185 RCW; creating a new section; and
5 prescribing penalties."

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