

HOUSE BILL REPORT

HB 2313

As Reported by House Committee On:

Commerce & Labor
Appropriations

Title: An act relating to bail bond recovery agents.

Brief Description: Regulating bail bond recovery agents.

Sponsors: Representatives Carrell, Boldt and Mielke.

Brief History:

Committee Activity:

Commerce & Labor: 1/14/04, 2/3/04 [DPS];
Appropriations: 2/6/04 [DPS(CL)].

Brief Summary of Substitute Bill

- Establishes a system of mandatory certification and contracting for bail bond recovery agents (bounty hunters).
- Requires prior notice to local law enforcement and identifying clothing when bail bond recovery agents make a planned forced entry to apprehend a fugitive.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse, Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 1 member: Representative Holmquist.

Staff: Susan Kavanaugh (786-7106).

Background:

Bail bond agencies post a bond to guarantee that a person will appear for a court date. A friend or relative of the defendant pays a premium, generally 10 percent of the bond amount, for this service, as well as providing collateral such as a lien on a home. If the defendant does not show up as scheduled for a court date, he or she is considered a fugitive, and the bail bond agency is liable to pay the entire amount of the bond. There is generally a grace period, the

length of which varies by court, in which the bail bond agent may produce the defendant and avoid having to pay the bond amount.

Bail bond agencies and agents are licensed by Washington State. Requirements for licensure as an agent include:

- being at least 18 years old and a citizen or resident alien of the United States;
- not having been convicted of any crime in the prior 10 years that, in the judgment of the Department of Licensing (Department), directly relates to their capacity to do the work of a bail bond agent; and
- submitting an application and completing four hours of pre-licensing training.

Bail bond recovery agents, sometimes known as "bounty hunters," search for and may arrest a fugitive for whom a bail bond has been posted. Bail bond recovery agents are not regulated in Washington. Bail bond recovery agents work under a variety of arrangements in Washington, including contracting with one or more bail bond agencies and operating independently. Also, some bail bond agents act as their own bail bond recovery agents.

An 1872 Supreme Court case, *Taylor v. Taintor* (16 Wall. 366), established that "the sureties" (those who provide bail bonds) do not have to follow due process in seeking a fugitive for whom a bail bond has been posted. They may search and arrest without a warrant.

Summary of Substitute Bill:

"Bail bond recovery agent" is defined to exclude law enforcement officers. It is stated that the Legislature does not intend by this act to restrict or limit the powers of bail bond agents under *Taylor v. Taintor*.

Certification and Contracting Requirements

Beginning January 1, 2006, no one may perform the function of a bail bond recovery agent unless the person is licensed and also has entered into a contract with a licensed bail bond agent. Bail bond agents acting as bail bond recovery agents must have an endorsement to their license.

The Department is directed to adopt rules, in consultation with the industry, law enforcement, and prosecutors, for the bail bond recovery agent license, including pre-license training and examination. Minimum requirements for licensure include:

- education or experience appropriate for the work;
- knowledge of relevant areas of criminal and civil law;
- knowledge of appropriate use of force;
- training in the use of firearms;
- criminal history background check - convictions may disqualify an applicant;
- minimum age 21 years; and

- possession of both a firearms certificate and a concealed pistol license, if carrying a firearm in the course of work as a bail bond recovery agent.

Beginning January 1, 2006, it is a gross misdemeanor and unprofessional conduct to function as a bail bond recovery agent without being both licensed and contracted. There must be a separate contract for each fugitive being sought. The bail bond recovery agent must carry a copy of the license and contract while working. If requested, the bail bond recovery agent must show the contract to the fugitive and to the owner or manager of any property the agent enters, but need not do this immediately during an effort to apprehend a fugitive.

Bail bond recovery agents from other states who are not licensed may operate in Washington only under the supervision of a licensed bail bond recovery agent.

Bail bond recovery agents must operate under both the law and the specific authority given them in their contract with a bail bond agency. The contract may require more than the minimums required for licensure.

It is unprofessional conduct for a bail bond recovery agent to wear law enforcement-style clothing, make statements that would reasonably cause another person to believe the bail bond recovery agent is a law enforcement officer, use a dog in the apprehension of a fugitive, or be untruthful in applying for a license.

It is unprofessional conduct for a bail bond agent to use the services of a bail bond recovery agent who is not both licensed and under contract.

Bail bond recovery agents must notify local law enforcement whenever they discharge a firearm in the course of their work.

Planned Forced Entry Notice and Identification Requirements

"Planned forced entry" is defined to mean going into a home or other structure without the permission or knowledge of the occupant in an effort to pick up a fugitive, if this action was planned in advance. It does not include situations, such as during a chase or a casual encounter, where the forced entry happens without advance planning.

Notice

Before a planned forced entry, the bail bond recovery agent must notify an appropriate local law enforcement agency. The notice has to include at least the following information:

- the name of the defendant being sought;
- the address or approximate address where the entry is anticipated;
- the name of the bail bond recovery agent;
- the name of the bail bond agency for whom the recovery agent is working; and
- the alleged offense or conduct that led to a bail bond being issued on the defendant.

Identification

During a planned forced entry, the bail bond recovery agent is required to wear a shirt or vest with the words "BAIL RECOVERY AGENT" written on the front and back in letters at least

two inches high. The words must be reflective and in a color that contrasts with the color of the garment.

Beginning January 1, 2006, it is a gross misdemeanor for a bail bond recovery agent to make a planned forced entry without complying with both the notice and the identification requirements.

Substitute Bill Compared to Original Bill:

A requirement is added that bail bond agents acting as bail bond recovery agents must meet the requirements for licensure as a bail bond recovery agent. Bail bond recovery agents are required to be licensed (rather than certified). Background check requirements for licensure as a bail bond recovery agent are added. The Department is given authority to decide what crimes make an applicant ineligible for licensure as a bail bond recovery agent. It is specified that bail bond recovery agents be at least 21 years old in the course of their work.

The list of what constitutes unprofessional conduct is expanded to include using law enforcement-style badges or making statements that would reasonably cause another person to believe the bail bond recovery agent is a law enforcement officer, using a dog in the apprehension of a fugitive, and being untruthful in an application for licensure.

Bail bond recovery agents who prove they have already met the pre-licensing training requirements established in the bill are exempted from having to repeat them.

Bail bond recovery agents are required to present, on request, a copy of the contract under which they are operating to a fugitive or property owner immediately. However they need not do so immediately if doing so would unduly interfere with apprehending the fugitive, but must show the contract within a reasonable time afterward.

It is clarified that the prohibition on misrepresentation does not prevent a bail bond recovery agent from using any pretext to find and apprehend a fugitive. Contracts between bail bond agents and bail bond recovery agents are required to be retained for three years.

Other technical and clarifying changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Bail bond recovery agents provide a valuable service in recovering bail skips at no cost to taxpayers. Bail bonds are more effective than recognizance releases in ensuring the defendant appears in court. There have been several incidents, including a recent one in Tacoma, in which bail bond recovery agents have acted inappropriately. Bail bond recovery agents need to be trained and have knowledge of the law and appropriate use of

force. Bail bond recovery agents will be required to be at least 21 years old, as this is the minimum age for a concealed pistol permit. Bail bond recovery agents from outside Washington have been the cause of several problems, and the bill addresses that by requiring that such agents work under the supervision of a certified Washington Agent. Amendments are needed to address some issues in the bill regarding planned forced entry.

(Information only) The Department has worked with the prime sponsor and the industry on this bill. An estimated 85 bail bond recovery agents work in Washington. The Department has received complaints about bail bond recovery agents regarding forced entry and mistaken identity.

Testimony Against: None.

Persons Testifying: Gordon Walgren, Washington State Bail Agents; and Jon Fitzpatrick, Fugitive Recovery Specialists.

(Information only) Mary Haglund, Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Anderson, Boldt, Buck, Chandler, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Schual-Berke, Sump and Talcott.

Staff: Holly Lynde (786-7153).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Back in 1872, under *Taylor v. Taintor*, the Supreme Court decided that bounty hunters or bail enforcement agents could cross state lines, were not required to have a search warrant to break into someone's home, and could arrest someone and haul them back across state lines. Bail bond recovery agents have powers way beyond those of our police. A bail bond recovery agent can use up to and including deadly force. We have no law in

Washington regulating bail bond recovery agents; this is still literally the "wild west" here. The purpose of this bill is to help ensure that we have some law regarding their training, expertise, and behavior in this state, and to control recovery agents who might cross state lines, as has happened numerous times, causing problems for us. This bill has been carefully worked with the interested parties, including the bail bond industry, the bail bond recovery agents themselves, and the Department of Licensing, and we are all in agreement. This bill is a good step forward in regulating these bail bond recovery agents.

Testimony Against: None.

Persons Testifying: Gordon Walgren, Washington State Bail Agents; and Representative Carrell, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.