

HOUSE BILL REPORT

SHB 1098

As Passed House:
February 25, 2013

Title: An act relating to adopting certain unanimous recommendations of the bail practices work group created in section 2, chapter 256, Laws of 2010.

Brief Description: Addressing bail practices.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Hope and Hurst).

Brief History:

Committee Activity:

Public Safety: 1/30/13, 2/7/13 [DPS].

Floor Activity:

Passed House: 2/25/13, 92-0.

Brief Summary of Substitute Bill

- Amends the licensing and professional conduct requirements of bail bond agents and bail bond recovery agents.
- Defines the circumstances under which a bail bond agent can surrender a person under their bond.
- Requires a court to notify the Administrative Office of Courts when the court revokes or reinstates the justification or certification of a bail bond agent to post bonds in the court.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Staff: Sarah Koster (786-7303).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Bail Practices Work Group (Work Group) was created in chapter 256 of the Laws of 2010 to study bail practices and procedures in a comprehensive manner and make recommendations to the Governor, the Washington Supreme Court, and the Legislature. The Work Group issued a report with unanimous recommendations on December 1, 2010.

A "bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to ensure the appearance of a criminal defendant before the courts of this state or the United States.

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

Notification of Failure to Appear.

If a court does not notify a surety of a defendant's failure to appear within 30 calendar days of the date of appearance, the forfeiture is null and void and the recognizance is exonerated. The parties may stay the execution of the forfeiture judgment for 60 days by giving a bond with two sureties.

Surrender.

A surety may surrender, or return to custody, a person under their bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail.

Licensing.

An applicant for licensure as a bail bond recovery agent must complete a records check, with fingerprints, through the Washington State Patrol (WSP) and the Federal Bureau of Investigation (FBI) at the applicant's expense. A background investigation may also be done for license renewals. For a bail bond agency license to be issued, the agency must file with the Director of the Department of Licensing (DOL) a bond for \$10,000 or maintain an interest-bearing account with a \$10,000 balance.

Summary of Substitute Bill:

Surrender.

A surety may return a person under their bond to custody for good cause. If a court determines that good cause does not exist, the surety must return the premium paid by or for the person and any recovery fee. Good cause includes, but is not limited to:

- reasonable belief in a substantial increase in the risk of flight;
- violation of a court order;
- failure to appear; and
- the concealment or intentional misrepresentations of information by the person.

Good cause may not include failure to make timely payments to the surety for the bond premium.

Unprofessional Conduct.

The statutory definition of "unprofessional conduct" for bail bond agents or bail bond recovery agents is expanded to include:

- entering into a contract, including a general power of attorney, which gives the bail bond agent full authority over the person's finances, assets, real property, or personal property; and
- when requested, failing to reasonably disclose to law enforcement information about the location of a fugitive criminal defendant.

Licensing and Certification.

An applicant for licensure as a bail bond recovery agent or a bail bond agent must complete a records check, with fingerprints, through the WSP and the FBI at the applicant's expense. A background investigation may also be done for license renewals.

The bonding requirement for licensing of a "property bond agency," which issues bail bonds executed for compensation the security for which is real property, tangible personal property, or other assets, is \$100,000. The bonding requirement or licensing of a "surety bond agency," which issues bail bonds that are guaranteed by an insurance company that has been qualified to transact surety insurance business in Washington by the Insurance Commissioner, is \$10,000.

If a court revokes or reinstates the certification of a bail bond agent, the presiding judge of the court must notify the Administrative Office of the Courts (AOC) of the revocation or reinstatement and the reasons for the action. The AOC must then notify superior courts and courts of limited jurisdiction statewide.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is an important step forward, even if it doesn't address everything that could be remedied about bail. It is something to build on. The bail industry welcomes this regulation. The major issues to focus on are good cause for surrender, because there are some horror stories about abuse of surrenders; the AOC notification; and the general power of attorney problem. Washington has a low failure to appear rate and a successful bail industry. This bill was based on consensus. Do not let the perfect be the enemy of the good. This is a good bill and there is universal agreement that these elements are improvements. All the parties have agreed to go back to the table at any time to continue to work on the issues.

(With concerns) Section 1 reduces the time for the court to notify the bail bond agents of defendants failure to appear from 30 to 14 days. This may not simply be enough time for the process of notifying a bail bond agent of the failure to appear. This was discussed in the fiscal note as having a cost for King County.

(Opposed) None.

Persons Testifying: (In support) Representative Hope, prime sponsor; Dylan Doty, Washington State Bail Agents Association; and Bob Cooper, Washington Defender Association of Criminal Defense Lawyers and Washington Defender Association.

(With concerns) James McMahan, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.