

# SENATE BILL REPORT

## HB 1022

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As of February 18, 2016

**Title:** An act relating to prohibiting general power of attorney provisions in bail bond agreements.

**Brief Description:** Prohibiting general power of attorney provisions in bail bond agreements.

**Sponsors:** Representatives Appleton and Goodman.

**Brief History:** Passed House: 3/10/15, 98-0; 2/11/16, 96-0.

**Committee Activity:** Law & Justice: 3/17/15, 3/31/15 [DP]; 2/18/16.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Pearson, Roach and Kohl-Welles.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Bail bond agents or bail bond businesses sell surety bonds or provide security in the form of personal or real property to ensure the appearance of a criminal defendant before a court.

A bail bond agent or business must be licensed by the Department of Licensing (Department). A licensee is subject to discipline by the Department for unprofessional conduct. Behavior that is categorized as unprofessional conduct may be general across all business and profession licensees, such as unlicensed practice, misrepresentations, or criminal violations, or it may be specific to bail bond agents. Unprofessional conduct specific to bail bond agents includes the following:

- failure to meet the qualifications of the license or comply with the profession's regulations and laws;
- mishandling funds or other collateral or improperly failing to return collateral;
- failing to keep records and maintain a trust account;
- any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness;
- wearing badges or making statements to create the false impression that the bail bond agent is a sworn peace officer;

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- performing as a bail bond recovery agent without adequate care for the safety or property of persons other than the defendant; and
- using a dog in the apprehension of a fugitive criminal defendant.

Unprofessional conduct may be disciplined through an order by the Department's disciplinary authority requiring revocation or suspension of the license, restriction of practice, a program of education or treatment, censure, probation, denial of license renewal, or a fine of up to \$5,000 per violation. The director of the Department may also order restitution to the person harmed by the licensee.

**Summary of Bill:** It is presumed to be unprofessional conduct for a bail bond agent to enter into a contract, including a general power of attorney, giving the bail bond agent full authority over another person's finances, assets, real property, or personal property. That presumption of unprofessional conduct may be overcome by a preponderance of the evidence, as determined by the Department.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** Testimony From 2015 Regular Session. PRO: Most bail bond companies are acting ethically. General power of attorney provisions are being used in bail contracts by a handful of less-than reputable companies. It is unnecessary where underwriting is available, and it is over-reaching. Bonding companies are able to take over the assets of people that sign contracts with general power of attorney provisions, and those companies may act with tyranny. A company with this authority may come in your house, seize your jewelry, seize your car, and there is nothing that you can do about it. People don't realize what they are signing. Use of these general power of attorney provisions should be presumed to be unprofessional conduct. The Department does not take actions against these companies but this bill could let them take disciplinary action for the use of these general power of attorney provisions. Other states prohibit the use of these provisions.

**Persons Testifying:** Persons Testifying From 2015 Regular Session. PRO: Representative Appleton, prime sponsor; Dylan Doty, WA State Bail Agents Assn.; Denny Behrend, Lacey OMalley Bonding.

**Persons Signed in to Testify But Not Testifying:** No one.

**Staff Summary of Public Testimony:** Testimony From 2016 Regular Session. PRO: Bail bond companies take premiums and specify collateral. There have been a few instances in Washington when an agency has obtained a power of attorney which gives the agency power over all of the person's assets. These provisions may be hidden in the bail bond contract. This will give the Department the ability to discipline these bail bond agencies in these circumstances.

**Persons Testifying:** Persons Testifying From 2016 Regular Session. PRO: Dylan Doty,  
Washington Bail Bond Coalition

**Persons Signed In To Testify But Not Testifying:** No one.