

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1870

53rd Legislature
1993 Regular Session

Passed by the House March 21, 1993
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 14, 1993
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1870** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1870

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Zellinsky, Heavey and R. Meyers)

Read first time 03/03/93.

1 AN ACT Relating to bail bond agents; adding a new chapter to Title
2 18 RCW; creating a new section; prescribing penalties; providing an
3 effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature declares that the licensing
6 of bail bond agents should be uniform throughout the state. Therefore,
7 it is the intent of the legislature to preempt any local regulation of
8 bail bond agents, including licensing fees, but not including local
9 business license fees. Nothing in this chapter limits the discretion
10 of the courts of this state to accept or reject a particular surety or
11 recognizance bond in a particular case.

12 NEW SECTION. **Sec. 2.** Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.

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

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

17 (3) "Collateral or security" means property of any kind given as
18 security to obtain a bail bond.

1 (4) "Bail bond agency" means a business that sells and issues
2 corporate surety bail bonds or that provides security in the form of
3 personal or real property to insure the appearance of a criminal
4 defendant before the courts of this state or the United States.

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

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

13 (7) "Licensee" means a bail bond agency or a bail bond agent or
14 both.

15 NEW SECTION. **Sec. 3.** An applicant must meet the following minimum
16 requirements to obtain a bail bond agent license:

- 17 (1) Be at least eighteen years of age;
18 (2) Be a citizen or resident alien of the United States;
19 (3) Not have been convicted of a crime in any jurisdiction in the
20 preceding ten years, if the director determines that the applicant's
21 particular crime directly relates to a capacity to perform the duties
22 of a bail bond agent and the director determines that the license
23 should be withheld to protect the citizens of Washington state. If the
24 director shall make a determination to withhold a license because of
25 previous convictions, the determination shall be consistent with the
26 restoration of employment rights act, chapter 9.96A RCW;
27 (4) Be employed by a bail bond agency or be licensed as a bail bond
28 agency; and
29 (5) Pay the required fee.

30 NEW SECTION. **Sec. 4.** (1) In addition to meeting the minimum
31 requirements to obtain a license as a bail bond agent, a qualified
32 agent must meet the following additional requirements to obtain a bail
33 bond agency license:

- 34 (a) Pass an examination determined by the director to measure the
35 person's knowledge and competence in the bail bond agency business; or
36 (b) Have had at least three years' experience as a manager,
37 supervisor, or administrator in the bail bond business or a related

1 field as determined by the director. A year's experience means not
2 less than two thousand hours of actual compensated work performed
3 before the filing of an application. An applicant shall substantiate
4 the experience by written certifications from previous employers. If
5 the applicant is unable to supply written certifications from previous
6 employers, applicants may offer written certifications from persons
7 other than employers who, based on personal knowledge, can substantiate
8 the employment; and

9 (c) Pay any additional fees as established by the director.

10 (2) An agency license issued under this section may not be assigned
11 or transferred without prior written approval of the director.

12 NEW SECTION. **Sec. 5.** (1) Applications for licenses required under
13 this chapter shall be filed with the director on a form provided by the
14 director. The director may require any information and documentation
15 that reasonably relates to the need to determine whether the applicant
16 meets the criteria, which may include fingerprints.

17 (2) After receipt of an application for a license, the director may
18 conduct an investigation to determine whether the facts set forth in
19 the application are true.

20 NEW SECTION. **Sec. 6.** (1) The director shall issue a bail bond
21 agent license card to each licensed bail bond agent. A bail bond agent
22 shall carry the license card whenever he or she is performing the
23 duties of a bail bond agent and shall exhibit the card upon request.

24 (2) The director shall issue a license certificate to each licensed
25 bail bond agency.

26 (a) Within seventy-two hours after receipt of the license
27 certificate, the licensee shall post and display the certificate in a
28 conspicuous place in the principal office of the licensee within the
29 state.

30 (b) It is unlawful for any person holding a license certificate to
31 knowingly and willfully post the license certificate upon premises
32 other than those described in the license certificate or to materially
33 alter a license certificate.

34 (c) Every advertisement by a licensee that solicits or advertises
35 business shall contain the name of the licensee, the address of record,
36 and the license number as they appear in the records of the director.

1 (d) The licensee shall notify the director within thirty days of
2 any change in the licensee's officers or directors or any material
3 change in the information furnished or required to be furnished to the
4 director.

5 NEW SECTION. **Sec. 7.** (1) The director shall adopt rules
6 establishing prelicense training and testing requirements, which shall
7 include a minimum of four hours of classes. The director may
8 establish, by rule, continuing education requirements for bail bond
9 agents.

10 (2) The director shall consult with the bail bond industry before
11 adopting or amending the prelicensing training or continuing education
12 requirements of this section.

13 (3) The director may appoint an advisory committee consisting of
14 representatives from the bail bond industry and a consumer to assist in
15 the development of rules to implement this chapter.

16 (4) A bail bond agent need not fulfill the prelicensing training
17 requirements of this chapter if he or she, within sixty days prior to
18 July 1, 1994, provides proof to the director that he or she previously
19 has met the training requirements of this chapter or has been employed
20 as a bail bond agent for at least eighteen consecutive months
21 immediately prior to the date of application.

22 NEW SECTION. **Sec. 8.** (1) No bail bond agency license may be
23 issued under the provisions of this chapter unless the qualified agent
24 files with the director a bond, executed by a surety company authorized
25 to do business in this state, in the sum of ten thousand dollars
26 conditioned to recover against the agency and its servants, officers,
27 agents, and employees by reason of its violation of the provisions of
28 section 11 of this act. The bond shall be made payable to the state of
29 Washington, and anyone so injured by the agency or its servants,
30 officers, agents, or employees may bring suit upon the bond in any
31 county in which jurisdiction over the licensee may be obtained. The
32 suit must be brought not later than two years after the failure to
33 return property in accordance with section 11 of this act. If valid
34 claims against the bond exceed the amount of the bond or deposit, each
35 claimant shall be entitled only to a pro rata amount, based on the
36 amount of the claim as it is valid against the bond, without regard to
37 the date of filing of any claim or action.

1 (2) Every licensed bail bond agency must at all times maintain on
2 file with the director the bond required by this section in full force
3 and effect. Upon failure by a licensee to do so, the director shall
4 suspend the licensee's license and shall not reinstate the license
5 until this requirement is met.

6 (3) In lieu of posting a bond, a qualified agent may deposit in an
7 interest-bearing account, ten thousand dollars.

8 (4) The director may waive the bond requirements of this section,
9 in his or her discretion, pursuant to adopted rules.

10 NEW SECTION. Sec. 9. (1) The provisions of this chapter relating
11 to the licensing for regulatory purposes of bail bond agents and bail
12 bond agencies are exclusive. No governmental subdivision of this state
13 may enact any laws or rules licensing for regulatory purposes such
14 persons, except as provided in subsections (2) and (3) of this section.

15 (2) This section shall not be construed to prevent a political
16 subdivision of this state from levying a business fee, business and
17 occupation tax, or other tax upon bail bond agencies if such fees or
18 taxes are levied by the political subdivision on other types of
19 businesses within its boundaries.

20 (3) This section shall not be construed to prevent this state or a
21 political subdivision of this state from licensing for regulatory
22 purposes bail bond agencies with respect to activities that are not
23 regulated under this chapter.

24 NEW SECTION. Sec. 10. (1) A bail bond agency shall notify the
25 director within thirty days after the death or termination of
26 employment of any employee who is a licensed bail bond agent.

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

31 NEW SECTION. Sec. 11. (1) Every qualified agent shall keep
32 adequate records for three years of all collateral and security
33 received, all trust accounts required by this section, and all bail
34 bond transactions handled by the bail bond agency, as specified by
35 rule. The records shall be open to inspection without notice by the
36 director or authorized representatives of the director.

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

19 (3) Whenever a bail bond is exonerated by the court, the bail bond
20 agency shall, within five business days after written notification of
21 exoneration and upon demand, return all collateral or security to the
22 person entitled thereto.

23 NEW SECTION. **Sec. 12.** The following acts are prohibited and
24 constitute grounds for disciplinary action or denial, suspension, or
25 revocation of any license under this chapter, as deemed appropriate by
26 the director:

27 (1) Knowingly violating any of the provisions of this chapter or
28 the rules adopted under this chapter;

29 (2) Knowingly making a material misstatement or omission in the
30 application for or renewal of a license;

31 (3) Failing to meet the qualifications set forth in sections 3 and
32 4 of this act;

33 (4) Conviction of a gross misdemeanor or felony or the commission
34 of any act involving moral turpitude, dishonesty, or corruption whether
35 the act constitutes a crime or not. If the act constitutes a crime,
36 conviction in a criminal proceeding is not a condition precedent to
37 disciplinary action. Upon such a conviction, however, the judgment and
38 sentence is conclusive evidence at the ensuing disciplinary hearing of

1 the guilt of the license holder or applicant of the crime described in
2 the indictment or information, and of the person's violation of the
3 statute on which it is based. For the purposes of this section,
4 conviction includes all instances in which a plea of guilty or nolo
5 contendere is the basis for the conviction and all proceedings in which
6 the sentence has been deferred or suspended. Nothing in this section
7 abrogates rights guaranteed under chapter 9.96A RCW;

8 (5) Advertising that is false, fraudulent, or misleading;

9 (6) Incompetence or negligence that results in injury to a person
10 or that creates an unreasonable risk that a person may be harmed;

11 (7) Suspension, revocation, or restriction of the individual's
12 license to practice the profession by competent authority in any state,
13 federal, or foreign jurisdiction, a certified copy of the order,
14 stipulation, or agreement being conclusive evidence of the revocation,
15 suspension, or restriction;

16 (8) Failure to cooperate with the director by not:

17 (a) Furnishing any necessary papers or documents requested by the
18 director for purposes of conducting an investigation for disciplinary
19 action, denial, suspension, or revocation of a license under this
20 chapter;

21 (b) Furnishing in writing a full and complete explanation covering
22 the matter contained in a complaint filed with the department; or

23 (c) Responding to subpoenas issued by the director, whether or not
24 the recipient of the subpoena is the accused in the proceeding;

25 (9) Failure to comply with an order issued by the director or an
26 assurance of discontinuance entered into with the director;

27 (10) Aiding or abetting an unlicensed person to practice if a
28 license is required;

29 (11) Knowingly committing, or being a party to, any material fraud,
30 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
31 or device whereby any other person lawfully relies upon the word,
32 representation, or conduct of the licensee;

33 (12) Failure to adequately supervise employees to the extent that
34 the client funds are at risk;

35 (13) Interference with an investigation or disciplinary proceeding
36 by willful misrepresentation of facts before the director or the
37 director's authorized representative, or by the use of threats or
38 harassment against any client or witness to prevent them from providing
39 evidence in a disciplinary proceeding or any other legal action;

1 (14) Assigning or transferring any license issued pursuant to the
2 provisions of this chapter, except as provided in section 4 of this
3 act;

4 (15) Conversion of any money or contract, deed, note, mortgage, or
5 other evidence of title, to his or her own use or to the use of his or
6 her principal or of any other person, when delivered to him or her in
7 trust or on condition, in violation of the trust or before the
8 happening of the condition; and failure to return any money or
9 contract, deed, note, mortgage, or other evidence of title within
10 thirty days after the owner is entitled to possession, and makes demand
11 for possession, shall be prima facie evidence of conversion;

12 (16) Failing to keep records, maintain a trust account, or return
13 collateral or security, as required by section 11 of this act;

14 (17) Any conduct in a bail bond transaction which demonstrates bad
15 faith, dishonesty, or untrustworthiness; or

16 (18) Violation of an order to cease and desist that is issued by
17 the director under this chapter.

18 NEW SECTION. **Sec. 13.** The director has the following authority in
19 administering this chapter:

20 (1) To adopt, amend, and rescind rules as deemed necessary to carry
21 out this chapter;

22 (2) To issue an order providing for one or any combination of the
23 following upon violation or violations of this chapter: Denying,
24 suspending, or revoking a license; assessing monetary penalties;
25 restricting or limiting practice; complying with conditions of
26 probation for a designated period of time; making restitution to the
27 person harmed by the licensee; or other corrective action;

28 (3) To issue subpoenas and administer oaths in connection with an
29 investigation, hearing, or proceeding held under this chapter;

30 (4) To take or cause depositions to be taken and use other
31 discovery procedures as needed in an investigation, hearing, or
32 proceeding held under this chapter;

33 (5) To compel attendance of witnesses at hearings;

34 (6) To establish fees by rule under RCW 43.24.086 and chapter 34.05
35 RCW;

36 (7) To take emergency action ordering summary suspension of a
37 license, or restriction or limitation of the licensee's practice
38 pending proceedings by the director;

1 (8) To use the office of administrative hearings as authorized in
2 chapter 34.12 RCW to conduct hearings. However, the director or the
3 director's designee shall make the final decision in the hearing;

4 (9) To enter into contracts for professional services determined to
5 be necessary for adequate enforcement of this chapter;

6 (10) To adopt standards of professional conduct or practice;

7 (11) In the event of a finding of unprofessional conduct by an
8 applicant or license holder, to impose sanctions against an applicant
9 or license holder as provided by this chapter;

10 (12) To enter into an assurance of discontinuance in lieu of
11 issuing a statement of charges or conducting a hearing. The assurance
12 shall consist of a statement of the law in question and an agreement to
13 not violate the stated provision. The applicant or license holder
14 shall not be required to admit to any violation of the law, and the
15 assurance shall not be construed as such an admission. Violation of an
16 assurance under this subsection is grounds for disciplinary action;

17 (13) To designate individuals authorized to sign subpoenas and
18 statements of charges; and

19 (14) To employ such investigative, administrative, and clerical
20 staff as necessary for the enforcement of this chapter.

21 NEW SECTION. **Sec. 14.** Any person may submit a written complaint
22 to the department charging a license holder or applicant with
23 unprofessional conduct and specifying the grounds for the charge. If
24 the director determines that the complaint merits investigation, or if
25 the director has reason to believe, without a formal complaint, that a
26 license holder or applicant may have engaged in unprofessional conduct,
27 the director shall investigate to determine if there has been
28 unprofessional conduct. A person who files a complaint under this
29 section in good faith is immune from suit in any civil action related
30 to the filing or contents of the complaint.

31 NEW SECTION. **Sec. 15.** (1) If the director determines, upon
32 investigation, that there is reason to believe a violation of this
33 chapter has occurred, a statement of charges shall be prepared and
34 served upon the license holder or applicant and notice of this action
35 given to the owner or qualified agent of the employing bail bond
36 agency. The statement of charges shall be accompanied by a notice that
37 the license holder or applicant may request a hearing to contest the

1 charges. The license holder or applicant must file a request for
2 hearing with the department within twenty days after being served the
3 statement of charges. The failure to request a hearing constitutes a
4 default, whereupon the director may enter an order under RCW 34.05.440.

5 (2) If a hearing is requested, the time of the hearing shall be
6 scheduled but the hearing shall not be held earlier than thirty days
7 after service of the charges upon the license holder or applicant. A
8 notice of hearing shall be issued at least twenty days prior to the
9 hearing, specifying the time, date, and place of the hearing.

10 NEW SECTION. **Sec. 16.** The procedures governing adjudicative
11 proceedings before agencies under chapter 34.05 RCW, the administrative
12 procedure act, shall govern all hearings before the director.

13 NEW SECTION. **Sec. 17.** If an order for payment of a monetary
14 penalty is made as a result of a hearing and timely payment is not made
15 as directed in the final order, the director may enforce the order for
16 payment in the superior court in the county in which the hearing was
17 held. This right of enforcement shall be in addition to any other
18 rights the director may have as to a licensee ordered to pay a monetary
19 penalty but shall not be construed to limit a licensee's ability to
20 seek judicial review.

21 In an action for enforcement of an order of payment of a monetary
22 penalty, the director's order is conclusive proof of the validity of
23 the order of payment of a penalty and the terms of payment.

24 NEW SECTION. **Sec. 18.** (1) The director shall investigate
25 complaints concerning practice by unlicensed persons of a profession or
26 business for which a license is required by this chapter. In the
27 investigation of the complaints, the director has the same authority as
28 provided the director under section 15 of this act. The director shall
29 issue a cease and desist order to a person after notice and hearing and
30 upon a determination that the person has violated this subsection. If
31 the director makes a written finding of fact that the public interest
32 will be irreparably harmed by delay in issuing an order, the director
33 may issue a temporary cease and desist order. The cease and desist
34 order shall not relieve the person practicing or operating a business
35 without a license from criminal prosecution therefor, but the remedy of
36 a cease and desist order shall be in addition to any criminal

1 liability. The cease and desist order is conclusive proof of
2 unlicensed practice and may be enforced under RCW 7.21.060. This
3 method of enforcement of the cease and desist order may be used in
4 addition to, or as an alternative to, any provisions for enforcement of
5 agency orders.

6 (2) The attorney general, a county prosecuting attorney, the
7 director, or any person may, in accordance with the law of this state
8 governing injunctions, maintain an action in the name of this state to
9 enjoin any person practicing a profession or business for which a
10 license is required by this chapter without a license from engaging in
11 such practice or operating such business until the required license is
12 secured. However, the injunction shall not relieve the person
13 practicing or operating a business without a license from criminal
14 prosecution therefor, but the remedy by injunction shall be in addition
15 to any criminal liability.

16 (3) After June 30, 1994, any person who performs the functions and
17 duties of a bail bond agent in this state without being licensed in
18 accordance with the provisions of this chapter, or any person
19 presenting or attempting to use as his or her own the license of
20 another, or any person who gives false or forged evidence of any kind
21 to the director in obtaining a license, or any person who falsely
22 impersonates any other licensee, or any person who attempts to use an
23 expired or revoked license, or any person who violates any of the
24 provisions of this chapter is guilty of a gross misdemeanor.

25 (4) After January 1, 1994, a person is guilty of a gross
26 misdemeanor if he or she owns or operates a bail bond agency in this
27 state without first obtaining a bail bond agency license.

28 (5) After June 30, 1994, the owner or qualified agent of a bail
29 bond agency is guilty of a gross misdemeanor if he or she employs any
30 person to perform the duties of a bail bond agent without the employee
31 having in his or her possession a permanent bail bond agent license
32 issued by the department.

33 (6) All fees, fines, forfeitures, and penalties collected or
34 assessed by a court because of a violation of this section shall be
35 remitted to the department.

36 NEW SECTION. **Sec. 19.** A person or business that violates an
37 injunction issued under this chapter shall pay a civil penalty, as
38 determined by the court, of not more than twenty-five thousand dollars,

1 which shall be paid to the department. For the purpose of this
2 section, the superior court issuing any injunction shall retain
3 jurisdiction.

4 NEW SECTION. **Sec. 20.** The director or individuals acting on the
5 director's behalf are immune from suit in any action, civil or
6 criminal, based on disciplinary proceedings or other official acts
7 performed in the course of their duties in the administration and
8 enforcement of this chapter.

9 NEW SECTION. **Sec. 21.** The director, in implementing and
10 administering the provisions of this chapter, shall act in accordance
11 with the administrative procedure act, chapter 34.05 RCW.

12 NEW SECTION. **Sec. 22.** Failure to fulfill the fiduciary duties and
13 other duties as prescribed in section 11 of this act is not reasonable
14 in relation to the development and preservation of business. A
15 violation of section 11 of this act is an unfair or deceptive act in
16 trade or commerce for the purpose of applying the consumer protection
17 act, chapter 19.86 RCW.

18 NEW SECTION. **Sec. 23.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 24.** The director of licensing may take such
23 steps as are necessary to ensure that this act is implemented on its
24 effective date.

25 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect July 1, 1993.

29 NEW SECTION. **Sec. 26.** Sections 1 through 23 of this act shall
30 constitute a new chapter in Title 18 RCW.

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