
SUBSTITUTE SENATE BILL 5760

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Moore, McCaslin and Winsley)

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 or secretarial support person who does not participate
12 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 twenty-one 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 last 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. The
24 director shall make a determination to withhold a license because of
25 previous convictions consistent with the restoration of employment
26 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 applicant files
24 with the director a surety bond, executed by a surety company
25 authorized to do business in this state, in the sum of forty thousand
26 dollars conditioned to recover against the principal and its servants,
27 officers, agents, and employees by reason of its wrongful or illegal
28 acts in conducting business licensed under this chapter. The bond
29 shall be made payable to the state of Washington, and anyone so injured
30 by the principal or its servants, officers, agents, or employees shall
31 have the right and shall be permitted to sue directly upon this
32 obligation in his or her own name. This obligation shall be subject to
33 successive suits for recovery until the face amount is completely
34 exhausted.

35 (2) Every licensee must at all times maintain on file with the
36 director the surety bond required by this section in full force and
37 effect. Upon failure by a licensee to do so, the director shall

1 suspend the licensee's license and shall not reinstate the license
2 until this requirement is met.

3 (3) In lieu of posting bond, a licensed bail bond agency may file
4 with the director a certificate of insurance as evidence that it has
5 comprehensive general liability coverage of at least forty thousand
6 dollars.

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

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

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

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

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

28 NEW SECTION. **Sec. 11.** (1) After June 30, 1994, any person who
29 performs the functions and duties of a bail bond agent in this state
30 without being licensed in accordance with the provisions of this
31 chapter, or any person presenting or attempting to use as his or her
32 own the license of another, or any person who gives false or forged
33 evidence of any kind to the director in obtaining a license, or any
34 person who falsely impersonates any other licensee, or any person who
35 attempts to use an expired or revoked license, or any person who

1 violates any of the provisions of this chapter is guilty of a gross
2 misdemeanor.

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

6 (3) After June 30, 1994, the owner or qualified agent of a bail
7 bond agency is guilty of a gross misdemeanor if he or she employs any
8 person to perform the duties of a bail bond agent without the employee
9 having in his or her possession a permanent bail bond agent license
10 issued by the department.

11 NEW SECTION. **Sec. 12.** (1) Every licensed bail bond agent shall
12 keep adequate records for three years of all collateral and security
13 received, all trust accounts required by this section, and all bail
14 bond transactions handled by the agent, as specified by rule. The
15 records shall be open to inspection without notice by the director or
16 authorized representatives of the director.

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

35 NEW SECTION. **Sec. 13.** The following acts are prohibited and
36 constitute grounds for disciplinary action or denial, suspension, or

1 revocation of any license under this chapter, as deemed appropriate by
2 the director:

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

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

7 (3) Failing to meet the qualifications set forth in sections 3 and
8 4 of this act;

9 (4) Conviction of a gross misdemeanor or felony or the commission
10 of any act involving moral turpitude, dishonesty, or corruption whether
11 the act constitutes a crime or not. If the act constitutes a crime,
12 conviction in a criminal proceeding is not a condition precedent to
13 disciplinary action. Upon such a conviction, however, the judgment and
14 sentence is conclusive evidence at the ensuing disciplinary hearing of
15 the guilt of the license holder or applicant of the crime described in
16 the indictment or information, and of the person's violation of the
17 statute on which it is based. For the purposes of this section,
18 conviction includes all instances in which a plea of guilty or nolo
19 contendere is the basis for the conviction and all proceedings in which
20 the sentence has been deferred or suspended. Nothing in this section
21 abrogates rights guaranteed under chapter 9.96A RCW;

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

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

25 (7) Suspension, revocation, or restriction of the individual's
26 license to practice the profession by competent authority in any state,
27 federal, or foreign jurisdiction, a certified copy of the order,
28 stipulation, or agreement being conclusive evidence of the revocation,
29 suspension, or restriction;

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

31 (a) Furnishing any necessary papers or documents requested by the
32 director for purposes of conducting an investigation for disciplinary
33 action, denial, suspension, or revocation of a license under this
34 chapter;

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

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

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

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

5 (11) 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;

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

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

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

19 (15) Conversion of any money or contract, deed, note, mortgage, or
20 other evidence of title, to his or her own use or to the use of his or
21 her principal or of any other person, when delivered to him or her in
22 trust or on condition, in violation of the trust or before the
23 happening of the condition; and failure to return any money or
24 contract, deed, note, mortgage, or other evidence of title within
25 thirty days after the owner is entitled to possession, and makes demand
26 for possession, shall be prima facie evidence of conversion;

27 (16) Failing to preserve records, as required by section 12 of this
28 act;

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

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

33 NEW SECTION. **Sec. 14.** The director has the following authority in
34 administering this chapter:

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

37 (2) To issue an order providing for one or any combination of the
38 following upon violation or violations of this chapter: Denying,

1 suspending, or revoking a license; assessing monetary penalties;
2 restricting or limiting practice; complying with conditions of
3 probation for a designated period of time; making restitution to the
4 person harmed by the licensee; or other corrective action;

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

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

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

11 (6) To establish fees by rule under RCW 43.24.086 and chapter 34.05
12 RCW;

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

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

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

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

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

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

32 (13) To designate individuals authorized to sign subpoenas and
33 statements of charges; and

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

36 NEW SECTION. **Sec. 15.** Any person may submit a written complaint
37 to the department charging a license holder or applicant with
38 unprofessional conduct and specifying the grounds for the charge. If

1 the director determines that the complaint merits investigation, or if
2 the director has reason to believe, without a formal complaint, that a
3 license holder or applicant may have engaged in unprofessional conduct,
4 the director shall investigate to determine if there has been
5 unprofessional conduct. A person who files a complaint under this
6 section in good faith is immune from suit in any civil action related
7 to the filing or contents of the complaint.

8 NEW SECTION. **Sec. 16.** (1) If the director determines, upon
9 investigation, that there is reason to believe a violation of this
10 chapter has occurred, a statement of charges shall be prepared and
11 served upon the license holder or applicant and notice of this action
12 given to the owner or qualified agent of the employing bail bond
13 agency. The statement of charges shall be accompanied by a notice that
14 the license holder or applicant may request a hearing to contest the
15 charges. The license holder or applicant must file a request for
16 hearing with the department within twenty days after being served the
17 statement of charges. The failure to request a hearing constitutes a
18 default, whereupon the director may enter an order under RCW 34.05.440.

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

24 NEW SECTION. **Sec. 17.** The procedures governing adjudicative
25 proceedings before agencies under chapter 34.05 RCW, the administrative
26 procedure act, shall govern all hearings before the director.

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

1 In an action for enforcement of an order of payment of a penalty,
2 the director's order is conclusive proof of the validity of the order
3 of payment of a penalty and the terms of payment.

4 NEW SECTION. **Sec. 19.** (1) The director shall investigate
5 complaints concerning practice by unlicensed persons of a profession or
6 business for which a license is required by this chapter. In the
7 investigation of the complaints, the director has the same authority as
8 provided the director under section 16 of this act. The director shall
9 issue a cease and desist order to a person after notice and hearing and
10 upon a determination that the person has violated this subsection. If
11 the director makes a written finding of fact that the public interest
12 will be irreparably harmed by delay in issuing an order, the director
13 may issue a temporary cease and desist order. The cease and desist
14 order shall not relieve the person practicing or operating a business
15 without a license from criminal prosecution therefor, but the remedy of
16 a cease and desist order shall be in addition to any criminal
17 liability. The cease and desist order is conclusive proof of
18 unlicensed practice and may be enforced under RCW 7.21.060. This
19 method of enforcement of the cease and desist order may be used in
20 addition to, or as an alternative to, any provisions for enforcement of
21 agency orders.

22 (2) The attorney general, a county prosecuting attorney, the
23 director, or any person may, in accordance with the law of this state
24 governing injunctions, maintain an action in the name of this state to
25 enjoin any person practicing a profession or business for which a
26 license is required by this chapter without a license from engaging in
27 such practice or operating such business until the required license is
28 secured. However, the injunction shall not relieve the person
29 practicing or operating a business without a license from criminal
30 prosecution therefor, but the remedy by injunction shall be in addition
31 to any criminal liability.

32 (3) Unlicensed practice of a profession or operating a business for
33 which a license is required by this chapter, unless otherwise exempted
34 by law, constitutes a gross misdemeanor.

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

1 NEW SECTION. **Sec. 20.** A person or business that violates an
2 injunction issued under this chapter shall pay a civil penalty, as
3 determined by the court, of not more than twenty-five thousand dollars,
4 which shall be paid to the department. For the purpose of this
5 section, the superior court issuing any injunction shall retain
6 jurisdiction.

7 NEW SECTION. **Sec. 21.** The director or individuals acting on the
8 director's behalf are immune from suit in any action, civil or
9 criminal, based on disciplinary proceedings or other official acts
10 performed in the course of their duties in the administration and
11 enforcement of this chapter.

12 NEW SECTION. **Sec. 22.** The director, in implementing and
13 administering the provisions of this chapter, shall act in accordance
14 with the administrative procedure act, chapter 34.05 RCW.

15 NEW SECTION. **Sec. 23.** Failure to fulfill the fiduciary duties and
16 other duties as prescribed in section 12 of this act is not reasonable
17 in relation to the development and preservation of business. A
18 violation of section 12 of this act is an unfair or deceptive act in
19 trade or commerce for the purpose of applying the consumer protection
20 act, chapter 19.86 RCW.

21 NEW SECTION. **Sec. 24.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 25.** The director of licensing may take such
26 steps as are necessary to ensure that this act is implemented on its
27 effective date.

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

1 NEW SECTION. **Sec. 27.** Sections 1 through 24 of this act shall
2 constitute a new chapter in Title 18 RCW.

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