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SENATE BILL 5760

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State of Washington                      53rd Legislature                      1993 Regular Session

By Senators Moore, McCaslin and Winsley

Read first time 02/12/93. Referred to Committee on Labor & Commerce.

1            AN ACT Relating to bail bond agents; adding a new chapter to Title  
2 18 RCW; creating a new section; and prescribing penalties.

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

4            NEW SECTION.    **Sec. 1.** The legislature declares that the licensing  
5 of bail bond agents should be uniform throughout the state. Therefore,  
6 it is the intent of the legislature to preempt any local regulation of  
7 bail bond agents, including licensing fees, but not including local  
8 business license fees.

9            NEW SECTION.    **Sec. 2.** Unless the context clearly requires  
10 otherwise, the definitions in this section apply throughout this  
11 chapter.

12            (1) "Bail bond agent" means a person who provides security in the  
13 form of a corporate surety bond, or personal or real property to insure  
14 the appearance of a criminal defendant before the courts of this state.

15            (2) "Person" also means a corporation or copartnership, except  
16 where otherwise restricted.

17            (3) "Commission" means the bail bond commission of the state of  
18 Washington.

1 (4) "Director" means the director of licensing.

2 (5) "Collateral" or "collateral security" means a security given in  
3 addition to the direct security, and subordinate to it, intended to  
4 guaranty its validity or convertibility or insure its performance.

5 NEW SECTION. **Sec. 3.** The director, with the advice and approval  
6 of the commission, may adopt rules to govern the activities of bail  
7 bond agents and their employees, consistent with this chapter, fix the  
8 times and places for holding examinations of applicants for licenses  
9 and prescribe the method of conducting them. The director shall  
10 enforce all laws and rules relating to the licensing of bail bond  
11 agents, grant or deny licenses to bail bond agents, and hold hearings.  
12 The director may impose any one or more of the following sanctions:  
13 Suspend or revoke licenses, deny applications for licenses, fine  
14 violators, or require the completion of a course in a selected aspect  
15 of bail bond practice relevant to the provision of this chapter or rule  
16 violated. The director may institute a program of education for the  
17 benefit of the licensees and their employees and may charge a fee, as  
18 prescribed by the director by rule, for the certification of courses of  
19 instruction, instructors, and schools.

20 NEW SECTION. **Sec. 4.** There is established the bail bond  
21 commission of the state of Washington, consisting of the director of  
22 the commission and four commission members who shall act in an advisory  
23 capacity to the director. Three members shall be persons who have  
24 practiced as bail bond agents within the state of Washington for a  
25 period of five or more years.

26 The three commission members are appointed by the governor in the  
27 following manner: For a term of three years each, with the exception  
28 of the first appointees, who shall be appointed one for a term of one  
29 year, one for a term of two years, and one for a term of three years.  
30 Any vacancies on the commission shall be filled by appointment by the  
31 governor for the unexpired term.

32 NEW SECTION. **Sec. 5.** The three board members of the commission  
33 are compensated in accordance with RCW 43.03.240, plus travel expenses  
34 in accordance with RCW 43.03.050 and 43.03.060 when they are called  
35 into session by the director or when presiding at examinations for

1 applicants for licenses or when otherwise engaged in the business of  
2 the commission.

3 NEW SECTION. **Sec. 6.** The commission has authority to hold  
4 educational conferences for the benefit of the industry, and shall  
5 conduct examinations of applicants for licenses under this chapter as  
6 maybe necessary. It is charged with the preparation of examinations  
7 and shall administer them.

8 NEW SECTION. **Sec. 7.** The commission is responsible for the  
9 preparation of the examination to be submitted to applicants, and shall  
10 make and file with the director a list, which must be signed by a  
11 majority of the members of the commission conducting the examination,  
12 of all applicants who successfully passed the examination and of those  
13 who failed.

14 Any applicant who fails to pass the examination may apply again.

15 No applicant may be permitted to take the examination for a bail  
16 bond agent's license without first satisfying the director that the  
17 applicant is eighteen years of age or older.

18 NEW SECTION. **Sec. 8.** It is unlawful for any person to act as a  
19 bail bond agent without first obtaining a license and otherwise  
20 complying with the provisions of this chapter.

21 No suit or action may be brought for the collection of compensation  
22 as a bail bond agent without alleging and proving that the plaintiff  
23 was a duly licensed bail bond agent before the time of offering to  
24 perform any act or service or procuring any promise or contract for the  
25 payment of compensation for any contemplated act or service.

26 NEW SECTION. **Sec. 9.** (1) Any person desiring to be a bail bond  
27 agent must pass an examination as provided in this chapter. A person  
28 must make application for an examination and for a license on a form  
29 prescribed by the director. Concurrently, the applicant shall:

30 (a) Pay an examination fee as prescribed by the director by rule;

31 (b) If the applicant is a corporation, furnish a certified copy of  
32 its articles of incorporation, and a list of its officers and directors  
33 and their addresses. If the applicant is a foreign corporation, the  
34 applicant shall furnish a certified copy of certificate of authority to  
35 conduct business in the state of Washington, a list of its officers and

1 directors and their addresses, and evidence of current registration  
2 with the secretary of state. If the applicant is a copartnership, the  
3 applicant shall furnish a list of the partnership members and their  
4 addresses; and

5 (c) Furnish such other proof as the director may require concerning  
6 the honesty, truthfulness, and good reputation, as well as the  
7 identity, which may include fingerprints, of any applicants for a  
8 license, or of the officers of a corporation making the application.

9 (2) The director, by rule, may provide for temporary licenses, not  
10 to exceed six months, to permit ongoing business operations pending the  
11 outcome of the licensing application and examination procedure.

12 NEW SECTION. **Sec. 10.** The director shall provide each original  
13 applicant for a license with a manual containing a sample list of  
14 questions and answers pertaining to bail bond law and the operation of  
15 the business and may provide the manual at cost to any licensee or to  
16 other members of the public. The director shall ascertain by written  
17 examination, that each applicant, and in case of a corporation, or  
18 copartnership, that each officer, agent, or member whom it proposes to  
19 act as licensee, has:

20 (1) Appropriate knowledge of the English language, including  
21 reading, writing, spelling, and arithmetic;

22 (2) An understanding of the principles of bail bonds;

23 (3) An understanding of the obligations between principal and  
24 agent;

25 (4) An understanding of the principles of bailbonding practice and  
26 the canons of business ethics pertaining to bail bonds as adopted by  
27 the national association of bail agents; and

28 (5) An understanding of the provisions of this chapter.

29 NEW SECTION. **Sec. 11.** Before receiving his or her license every  
30 bail bond agent must pay a license fee as prescribed by the director by  
31 rule. Every license issued under the provisions of this chapter  
32 expires on the applicant's second birthday following issuance of the  
33 license. Licenses issued to partnerships expire on a date prescribed  
34 by the director by rule. Licenses issued to corporations expire on a  
35 date prescribed by the director by rule, except that if the corporation  
36 registration or certificate of authority filed with the secretary of  
37 state expires, the bail bond agent's license issued to the corporation

1 shall expire on that date. Licenses must be renewed every two years on  
2 or before the date established under this section and a biennial  
3 renewal license fee as prescribed by the director by rule must be paid.

4 If the application for a renewal license is not received by the  
5 director on or before the renewal date, a penalty fee as prescribed by  
6 the director by rule shall be paid. Acceptance by the director of an  
7 application for renewal after the renewal date shall not be a waiver of  
8 the delinquency.

9 The license of any person whose license renewal fee is not received  
10 within ninety days from the date of expiration shall be canceled. This  
11 person may obtain a new license by satisfying the procedures and  
12 requirements as prescribed by the director by rule.

13 The director shall issue to each active licensee a license and a  
14 pocket identification card in a form and size as prescribed.

15 NEW SECTION. **Sec. 12.** Every licensed bail bond agent must have  
16 and maintain an office in this state accessible to the public that  
17 shall serve as his or her office for the transaction of business. The  
18 office must comply with the zoning requirements of city or county  
19 ordinances and the bail bond agent's license must be prominently  
20 displayed in the office.

21 NEW SECTION. **Sec. 13.** A bail bond agent may apply to the director  
22 for authority to establish one or more branch offices under the same  
23 name as the main office upon the payment of a fee as prescribed by the  
24 director by rule. The director shall issue a duplicate license for  
25 each of the branch offices showing the location of the main office and  
26 the particular branch. Each duplicate license shall be prominently  
27 displayed in the office for which it is issued.

28 NEW SECTION. **Sec. 14.** Notice in writing shall be given to the  
29 director of any change by a bail bond agent of his or her business  
30 location or of any branch office. Upon the surrender of the original  
31 license for the business or the duplicate license applicable to a  
32 branch office, and a payment of a fee as prescribed by the director by  
33 rule, the director shall issue a new license or duplicate license, as  
34 the case may be, covering the new location.

1        NEW SECTION.    **Sec. 15.**    The director may publish annually a list of  
2 names and addresses of bail bond agents licensed under this chapter,  
3 together with a copy of this chapter and any information relative to  
4 the enforcement of this chapter as he or she may deem of interest to  
5 the public; and he or she may mail one copy to each licensed bail bond  
6 agent.

7        NEW SECTION.    **Sec. 16.**    (1) Any license issued under this chapter  
8 and not otherwise revoked is deemed "inactive" at any time it is  
9 delivered to the director.    Until reissued under this chapter, the  
10 holder of an inactive license is deemed to be unlicensed.

11        (2) An inactive license may be renewed on the same terms and  
12 conditions as an active license.    Failure to renew shall result in  
13 cancellation in the same manner as an active license.

14        (3) An inactive license may be placed in an active status upon  
15 completion of an application as provided by the director and upon  
16 compliance with this chapter and the rules adopted under this chapter.

17        (4) The provisions of this chapter relating to the denial,  
18 suspension, and revocation of a license are applicable to an inactive  
19 license as well as an active license, except that when proceedings to  
20 suspend or revoke an inactive license have been initiated, the license  
21 shall remain inactive until the proceedings have been completed.

22        NEW SECTION.    **Sec. 17.**    All fees required under this chapter shall  
23 be set by the director in accordance with RCW 43.24.086 and shall be  
24 paid to the state treasurer.    The sum of five dollars from each license  
25 fee and each renewal fee received from a bail bond agent shall be  
26 placed in the general fund.    The balance of these fees and all other  
27 fees paid under the provisions of this chapter shall be placed in the  
28 bail bond commission account hereby created in the state treasury.    All  
29 money derived from fines imposed under this chapter shall also be  
30 deposited in the bail bond commission account, shall be used solely for  
31 education for the benefit of licensees, and shall be subject to  
32 appropriation under chapter 43.88 RCW.

33        NEW SECTION.    **Sec. 18.**    The director may, upon his or her own  
34 motion, and shall upon verified complaint in writing by any person,  
35 investigate the actions of any person engaged in the business or acting  
36 in the capacity of a bail bond agent and may impose any one or more of

1 the following sanctions: Suspend or revoke, levy a fine not to exceed  
2 one thousand dollars for each offense, require the completion of a  
3 course in a selected area of bail bond practice relevant to the section  
4 of this chapter or rule violated, or deny the license of any holder or  
5 applicant who is guilty of:

6 (1) Obtaining a license by means of fraud, misrepresentation,  
7 concealment, or through the mistake or inadvertence of the director;

8 (2) Violating any of the provisions of this chapter or any lawful  
9 rules;

10 (3) Being convicted in a court of competent jurisdiction of this or  
11 any other state, or federal court, of forgery, embezzlement, obtaining  
12 money under false pretenses, bribery, larceny, extortion, conspiracy to  
13 defraud, or any similar offense or offenses. For the purposes of this  
14 section being convicted includes all instances in which a plea of  
15 guilty or nolo contendere is the basis for the conviction, and all  
16 proceedings in which the sentence has been deferred or suspended;

17 (4) Making, printing, publishing, distributing, or causing,  
18 authorizing, or knowingly permitting the making, printing, publication,  
19 or distribution of false statements, descriptions, or promises of the  
20 character as to reasonably induce any person to act, if the statements,  
21 descriptions, or promises purport to be made or to be performed by  
22 either the licensee or his or her principal and the licensee then knew  
23 or, by the exercise of reasonable care and inquiry, could have known,  
24 of the falsity of the statements, descriptions, or promises;

25 (5) Knowingly committing, or being a party to, any material fraud,  
26 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
27 or device whereby any other person lawfully relies upon the word,  
28 representation, or conduct of the licensee;

29 (6) Conversion of any money, contract, deed, note, mortgage, or  
30 abstract or other evidence of title, to his or her own use or to the  
31 use of his or her principal or of any other person, when delivered to  
32 him or her in trust or on condition, in violation of the trust or  
33 before the happening of the condition; and failure to return any money  
34 or contract, deed, note, mortgage, abstract, or other evidence of title  
35 within thirty days after the owner is entitled to possession, and makes  
36 demand for possession, shall be prima facie evidence of a conversion;

37 (7) Failing, upon demand, to disclose any information within his or  
38 her knowledge to, or to produce any document, book or record in his or

1 her possession for inspection of the director or his or her authorized  
2 representatives acting by authority of law;

3 (8) Continuing to act as a bail bond agent when the interests of  
4 the public are endangered, after the director has, by order in writing,  
5 stated objections;

6 (9) Committing any act of fraudulent or dishonest dealing or a  
7 crime involving moral turpitude, and a certified copy of the final  
8 holding of any court of competent jurisdiction in this matter is  
9 conclusive evidence in any hearing under this chapter;

10 (10) Advertising in any manner without affixing the bail bond  
11 agent's name as licensed to the advertisement;

12 (11) Misrepresentation of his or her membership in any state or  
13 national bail bond agent association;

14 (12) Discrimination against any person in hiring or in sales  
15 activity, on the basis of race, color, creed, or national origin, or  
16 violating any of the provisions of any state or federal  
17 antidiscrimination law;

18 (13) Failing to keep an escrow or trustee account of funds  
19 deposited with him or her relating to a bail bond transaction, for a  
20 period of three years, showing to whom paid, and the other pertinent  
21 information as the director may require, the records to be available to  
22 the director, or his or her representatives, on demand, or upon written  
23 notice given to the bank;

24 (14) Failing to preserve for three years following its consummation  
25 records relating to any bail bond transaction;

26 (15) Any conduct in a bail bond transaction which demonstrates bad  
27 faith, dishonesty, untrustworthiness, or incompetency; or

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

30 NEW SECTION. **Sec. 19.** The director may deputize one or more  
31 assistants to perform his or her duties with reference to disciplinary  
32 action.

33 NEW SECTION. **Sec. 20.** The disciplinary proceedings shall be had  
34 on motion of the director or after a statement in writing verified by  
35 some person or persons familiar with the facts upon which the proposed  
36 disciplinary action is based has been filed with the director. Upon  
37 receipt of a statement or accusation, the director shall make a

1 preliminary investigation of the facts charged to determine whether the  
2 statement or accusation is sufficient. If the director determines the  
3 statement or accusation is sufficient to require formal action, the  
4 director shall set the matter for hearing at a specified time and  
5 place. A copy of the order setting time and place and a copy of the  
6 verified statement shall be served upon the licensee or applicant  
7 involved not less than twenty days before the day appointed in the  
8 order for the hearing. The department of licensing, the licensee or  
9 applicant accused, and the person making the accusation may be  
10 represented by counsel at the hearing. The director or an  
11 administrative law judge appointed under chapter 34.12 RCW shall hear  
12 and receive pertinent evidence and testimony.

13 NEW SECTION. **Sec. 21.** If the licensed person or applicant accused  
14 does not appear at the time and place appointed for the hearing in  
15 person or by counsel, the hearing officer may proceed and determine the  
16 facts of the accusation in his or her absence. The proceedings may be  
17 conducted at places within the state convenient to all persons  
18 concerned as determined by the director, and may be adjourned from day  
19 to day or for longer periods. The hearing officer shall have a  
20 transcript of all proceedings prepared by a reporter and shall furnish  
21 upon request after completion, a copy of the transcript to the licensed  
22 person or applicant accused in the proceedings at the expense of the  
23 licensee or applicant. The hearing officer shall certify the  
24 transcript of proceedings to be true and correct. If the director  
25 finds that the statement or accusation is not proved by a fair  
26 preponderance of evidence, the director shall notify the licensee or  
27 applicant and the person making the accusation and dismiss the case.

28 NEW SECTION. **Sec. 22.** If the director decides, after a hearing,  
29 that the evidence supports the accusation by a preponderance of  
30 evidence, the director may impose sanctions authorized under this  
31 chapter. In this event the director shall enter an order to that  
32 effect and shall file the order in his or her office and immediately  
33 mail a copy to the affected party at the address of record with the  
34 department of licensing. The order shall not be operative for a period  
35 of ten days from the date it is entered. Any licensee or applicant  
36 aggrieved by a final decision by the director in an adjudicative  
37 proceeding, whether the decision is affirmative or negative in form, is

1 entitled to a judicial review in the superior court under the  
2 provisions of the administrative procedure act under chapter 34.05 RCW.  
3 Upon instituting appeal in the superior court, the appellant shall give  
4 a cash bond to the state of Washington. The bond shall be filed with  
5 the clerk of the court, in a sum to be fixed by rule by the director  
6 and approved by the judge of the court, conditioned to pay all costs  
7 that may be awarded against the appellant in the event of an adverse  
8 decision. The bond and notice must be filed within thirty days from  
9 the date of the director's decision.

10 NEW SECTION. **Sec. 23.** The filing of a notice and bond supersedes  
11 the order of the director until the final determination of the appeal.  
12 The director shall prepare at appellant's expense and shall certify a  
13 transcript of the whole record to the director's office of all matters  
14 involved in the appeal, and the transcript shall be delivered by the  
15 director to the court in which the appeal is pending. The appellant  
16 shall be notified of the filing of the transcript and the cost and  
17 shall within fifteen days after notification pay the cost of the  
18 transcript. If the cost is not paid in full within fifteen days, the  
19 appeal shall be dismissed.

20 NEW SECTION. **Sec. 24.** If the appellant fails to perfect an appeal  
21 or fails to pay the expense of preparing the transcript, the stay of  
22 proceedings shall automatically terminate.

23 An aggrieved party may secure review of a final judgment of the  
24 superior court. The appeal shall be taken in the manner provided by  
25 law for appeals from the superior court in other civil cases.

26 NEW SECTION. **Sec. 25.** Every bond given under the provisions of  
27 this chapter, after approval by the director, shall be filed in his or  
28 her office. Any person who is damaged by the wrongful conversion of  
29 trust funds by any bail bond agent shall, in addition to other legal  
30 remedies, have a right of action on the bond for all damages not  
31 exceeding five thousand dollars against a bail bond agent.

32 NEW SECTION. **Sec. 26.** (1) Every licensed bail bond agent shall  
33 keep adequate records of all bail bond transactions handled by or  
34 through him or her, as specified by rule. The records shall be open to  
35 inspection by the director or authorized representatives.

1 (2) Every bail bond agent shall also keep separate bail bond cash  
2 collateral accounts in a recognized Washington state depository  
3 authorized to receive funds. Bail bond cash collateral accounts shall  
4 be kept separate and apart and physically segregated from the bail bond  
5 agent's own funds. All property, funds, or moneys of clients which are  
6 being held by a bail bond agent pending the closing of a bail bond  
7 transaction, or which have been collected for the client and are being  
8 held for disbursement for or to the client shall be segregated from the  
9 bail bond agents' own property and any cash collateral shall be  
10 deposited not later than the third banking day following receipt of the  
11 funds or moneys.

12 NEW SECTION. **Sec. 27.** Any person acting as a bail bond agent  
13 without a license, or violating any of the provisions of this chapter,  
14 is guilty of a gross misdemeanor.

15 NEW SECTION. **Sec. 28.** The attorney general shall render opinions  
16 to the director upon all questions of law relating to the construction  
17 or interpretation of this chapter, or arising in the administration of  
18 this chapter, that may be submitted by the director. The attorney  
19 general is the attorney for the director in all actions and proceedings  
20 brought by or against the director under this chapter.

21 NEW SECTION. **Sec. 29.** The director may prefer a complaint for  
22 violation of any section of this chapter before any court of competent  
23 jurisdiction.

24 The prosecuting attorney of each county shall prosecute any  
25 violation of this chapter that occurs in his or her county, and if the  
26 prosecuting attorney fails to act, the director may request the  
27 attorney general to take action in lieu of the prosecuting attorney.

28 Process issued by the director extends to all parts of the state,  
29 and may be served by any person authorized to serve process of courts  
30 of record, or may be mailed by registered mail to the licensee's last  
31 business address of record in the office of the director.

32 Whenever the director believes from evidence satisfactory to him or  
33 her that any person has violated any of the provisions of this chapter  
34 or any rule, order, license, decision, demand, or requirement, he or  
35 she may bring an action in the superior court in the county where the  
36 person resides in order to enjoin that person from continuing the

1 violation or engaging or doing any act or acts in furtherance of the  
2 violation. In this action an order or judgment may be entered awarding  
3 a preliminary or final injunction as may be proper.

4 The director may petition the superior court in any county in this  
5 state for the immediate appointment of a receiver to take over,  
6 operate, or close any bail bond agent's office in this state that is  
7 found, upon inspection of its books and records, to be operating in  
8 violation of this chapter, pending a hearing.

9 NEW SECTION. **Sec. 30.** The director may administer oaths; certify  
10 to all official acts; subpoena and bring before him or her any person  
11 in this state as a witness; compel the production of books and papers;  
12 and take the testimony of any person by deposition in the manner  
13 prescribed by the superior courts in civil cases, in any hearing in any  
14 part of the state.

15 Each witness, who appears by order of the director, shall receive  
16 for his or her attendance the fees and mileage allowed to a witness in  
17 civil cases in the superior court. Witness fees shall be paid by the  
18 party at whose request the witness is subpoenaed.

19 If a witness, who has not been required to attend at the request of  
20 any party, is subpoenaed by the director, the fees and mileage shall be  
21 paid from funds appropriated for the use of the department of licensing  
22 in the same manner as other expenses of the department are paid.

23 NEW SECTION. **Sec. 31.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 32.** The director of licensing may take such  
28 steps as are necessary to ensure that this act is implemented on its  
29 effective date.

30 NEW SECTION. **Sec. 33.** Sections 1 through 31 of this act shall  
31 constitute a new chapter in Title 18 RCW.

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