

HOUSE BILL REPORT

HB 2668

As Reported by House Committee On:
Public Safety & Emergency Preparedness

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

Brief Description: Addressing bail practices.

Sponsors: Representatives Hope, Hurst and Kelley.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/25/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

- Amends the licensing and professional conduct requirements of bail bond agents.
- Defines the circumstances under which a bail bond agent can surrender a person under their bond.
- Requires a court to provide a surety with notice of a defendant's failure to appear within 14 days.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Assistant Ranking Minority Member.

Staff: Sarah Koster (786-7303).

Background:

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.

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.

Trust Accounts.

Bail bond agents who hold collateral or security for persons held under their bond are fiduciaries of that property. Accordingly, they must maintain adequate records and keep all funds received as collateral or security in a trust account. The agent must annually report the account number and balance of the trust account.

Summary of Substitute Bill:

House Bill 2668 incorporates several of the unanimous recommendations of the Work Group, amending chapter 19 of Title 10 and chapter 185 of Title 18 of the RCW.

Notification of Failure to Appear.

Shortens the period by which a surety must be notified of a defendant's failure to appear. If a defendant fails to appear, the recognizance will be declared forfeited and the surety must be notified in writing. If the surety is not notified within a certain period of time, the forfeiture will be invalidated. The period of time for notification is shortened from 30 days to 14 days.

Surrender.

Allows a surety to 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. If a bail bond agent violates this section, it is unprofessional conduct.

Unprofessional Conduct.

Expands the statutory definition of "unprofessional conduct" 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;
- surrendering a person without good cause; 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 substitute bill creates a distinction between a "property bond agency," which issues bail bonds executed for compensation the security for which is real property, tangible personal property, or other assets, and 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.

The substitute bill amends the bond requirements for licensing of a surety bond agency from \$10,000 to \$10,000 for a bail bond agency and \$100,000 for a property bond agency.

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.

Trust Accounts.

Trust accounts, which every agent who receives collateral or security must maintain, may be audited by the DOL every two years, unless the licensee regularly submits a financial report prepared by a certified public accountant to the DOL.

Substitute Bill Compared to Original Bill:

The substitute bill includes reasonable belief in an increased risk of flight as good cause for surrender by a surety and amends the definition of a surety bond agency to include those agencies which issue surety bonds, as well as other types of bond.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The government spent a lot of money on the Work Group and the provisions of this bill are unanimously agreed to be important and positive. The controversy about a few issues discussed at the Work Group should not prevent these noncontroversial issues from becoming law. The remaining provisions will be addressed in time.

(Opposed) This bill is inadequate and if it passes, the most important provisions regarding bail reform will never become law because the urgency will be lost. A bail floor provision is necessary to provide victims with the information they need to protect themselves. It is important for courts to decide how much people have to pay and for the parties to know how much actually had to be paid.

Persons Testifying: (In support) Representative Hope, prime sponsor; Representative Hurst; Dylan Doty, Washington State Bail Agents Association; and Holly Chisa, Two Jinn, Inc.

(Opposed) Mark Roe, Snohomish County Prosecutor's Office; Russ Hauge, Kitsap County Prosecutor's Office; and Brian Wurts, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying: None.