CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1870

Chapter 260, Laws of 1993

53rd Legislature
1993 Regular Session

BAIL BOND AGENT LICENSING REQUIREMENTS

EFFECTIVE DATE: 7/1/93

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

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BRIAN EBERSOLE
Speaker of the
House of Representatives

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

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JOEL PRITCHARD
President of the Senate

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.

__________________________
ALAN THOMPSON
Chief Clerk

Approved May 7, 1993

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MIKE LOWRY
Governor of the State of Washington

FILED

May 7, 1993 - 11:45 a.m.

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May 7, 1993 - 11:45 a.m.
AN ACT Relating to bail bond agents; adding a new chapter to Title 18 RCW; creating a new section; prescribing penalties; providing an effective date; and declaring an emergency.

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

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

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

(1) "Department" means the department of licensing.
(2) "Director" means the director of licensing.
(3) "Collateral or security" means property of any kind given as security to obtain a bail bond.
(4) "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 insure the appearance of a criminal defendant before the courts of this state or the United States.

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

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

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

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

(1) Be at least eighteen years of age;

(2) Be a citizen or resident alien of the United States;

(3) Not have been convicted of a crime in any jurisdiction in the preceding ten years, if the director determines that the applicant’s particular crime directly relates to a capacity to perform the duties of a bail bond agent and the director determines that the license should be withheld to protect the citizens of Washington state. If the director shall make a determination to withhold a license because of previous convictions, the determination shall be consistent with the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by a bail bond agency or be licensed as a bail bond agency; and

(5) Pay the required fee.

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

(a) Pass an examination determined by the director to measure the person’s knowledge and competence in the bail bond agency business; or

(b) Have had at least three years’ experience as a manager, supervisor, or administrator in the bail bond business or a related
field as determined by the director. A year’s experience means not
less than two thousand hours of actual compensated work performed
before the filing of an application. An applicant shall substantiate
the experience by written certifications from previous employers. If
the applicant is unable to supply written certifications from previous
employers, applicants may offer written certifications from persons
other than employers who, based on personal knowledge, can substantiate
the employment; and
(c) Pay any additional fees as established by the director.
(2) An agency license issued under this section may not be assigned
or transferred without prior written approval of the director.

NEW SECTION. Sec. 5. (1) Applications for licenses required under
this chapter shall be filed with the director on a form provided by the
director. The director may require any information and documentation
that reasonably relates to the need to determine whether the applicant
meets the criteria, which may include fingerprints.
(2) After receipt of an application for a license, the director may
conduct an investigation to determine whether the facts set forth in
the application are true.

NEW SECTION. Sec. 6. (1) The director shall issue a bail bond
agent license card to each licensed bail bond agent. A bail bond agent
shall carry the license card whenever he or she is performing the
duties of a bail bond agent and shall exhibit the card upon request.
(2) The director shall issue a license certificate to each licensed
bail bond agency.
(a) Within seventy-two hours after receipt of the license
certificate, the licensee shall post and display the certificate in a
conspicuous place in the principal office of the licensee within the
state.
(b) It is unlawful for any person holding a license certificate to
knowingly and willfully post the license certificate upon premises
other than those described in the license certificate or to materially
alter a license certificate.
(c) Every advertisement by a licensee that solicits or advertises
business shall contain the name of the licensee, the address of record,
and the license number as they appear in the records of the director.
(d) The licensee shall notify the director within thirty days of any change in the licensee’s officers or directors or any material change in the information furnished or required to be furnished to the director.

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

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

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

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

NEW SECTION.  Sec. 8.  (1) No bail bond agency license may be issued under the provisions of this chapter unless the qualified agent files with the director a bond, executed by a surety company authorized to do business in this state, in the sum of ten thousand dollars conditioned to recover against the agency and its servants, officers, agents, and employees by reason of its violation of the provisions of section 11 of this act. The bond shall be made payable to the state of Washington, and anyone so injured by the agency or its servants, officers, agents, or employees may bring suit upon the bond in any county in which jurisdiction over the licensee may be obtained. The suit must be brought not later than two years after the failure to return property in accordance with section 11 of this act. If valid claims against the bond exceed the amount of the bond or deposit, each claimant shall be entitled only to a pro rata amount, based on the amount of the claim as it is valid against the bond, without regard to the date of filing of any claim or action.
(2) Every licensed bail bond agency must at all times maintain on file with the director the bond required by this section in full force and effect. Upon failure by a licensee to do so, the director shall suspend the licensee’s license and shall not reinstate the license until this requirement is met.

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

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

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

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

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

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

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

NEW SECTION. Sec. 11. (1) Every qualified agent shall keep adequate records for three years of all collateral and security received, all trust accounts required by this section, and all bail bond transactions handled by the bail bond agency, as specified by rule. The records shall be open to inspection without notice by the director or authorized representatives of the director.
(2) Every qualified agent who receives collateral or security is a fiduciary of the property and shall keep adequate records for three years of the receipt, safekeeping, and disposition of the collateral or security. Every qualified agent shall maintain a trust account in a federally insured financial institution located in this state. All moneys, including cash, checks, money orders, wire transfers, and credit card sales drafts, received as collateral or security or otherwise held for a bail bond agency’s client shall be deposited in the trust account not later than the third banking day following receipt of the funds or money. A qualified agent shall not in any way encumber the corpus of the trust account or commingle any other moneys with moneys properly maintained in the trust account. Each qualified agent required to maintain a trust account shall report annually under oath to the director the account number and balance of the trust account, and the name and address of the institution that holds the trust account, and shall report to the director within ten business days whenever the trust account is changed or relocated or a new trust account is opened.

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

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

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

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

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

(4) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of
the guilt of the license holder or applicant of the crime described in
the indictment or information, and of the person’s violation of the
statute on which it is based. For the purposes of this section,
conviction includes all instances in which a plea of guilty or nolo
contendere is the basis for the conviction and all proceedings in which
the sentence has been deferred or suspended. Nothing in this section
abrogates rights guaranteed under chapter 9.96A RCW;
(5) Advertising that is false, fraudulent, or misleading;
(6) Incompetence or negligence that results in injury to a person
or that creates an unreasonable risk that a person may be harmed;
(7) Suspension, revocation, or restriction of the individual’s
license to practice the profession by competent authority in any state,
 federal, or foreign jurisdiction, a certified copy of the order,
stipulation, or agreement being conclusive evidence of the revocation,
suspension, or restriction;
(8) Failure to cooperate with the director by not:
(a) Furnishing any necessary papers or documents requested by the
director for purposes of conducting an investigation for disciplinary
action, denial, suspension, or revocation of a license under this
chapter;
(b) Furnishing in writing a full and complete explanation covering
the matter contained in a complaint filed with the department; or
(c) Responding to subpoenas issued by the director, whether or not
the recipient of the subpoena is the accused in the proceeding;
(9) Failure to comply with an order issued by the director or an
assurance of discontinuance entered into with the director;
(10) Aiding or abetting an unlicensed person to practice if a
license is required;
(11) Knowingly committing, or being a party to, any material fraud,
 misinformation, concealment, conspiracy, collusion, trick, scheme,
or device whereby any other person lawfully relies upon the word,
representation, or conduct of the licensee;
(12) Failure to adequately supervise employees to the extent that
the client funds are at risk;
(13) Interference with an investigation or disciplinary proceeding
by willful misrepresentation of facts before the director or the
director’s authorized representative, or by the use of threats or
harassment against any client or witness to prevent them from providing
evidence in a disciplinary proceeding or any other legal action;
(14) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in section 4 of this act;

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

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

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

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

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

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

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

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

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

(5) To compel attendance of witnesses at hearings;

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

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee’s practice pending proceedings by the director;
To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director’s designee shall make the final decision in the hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 19. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars,
which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction.

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

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

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

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

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

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

NEW SECTION. Sec. 26. Sections 1 through 23 of this act shall constitute a new chapter in Title 18 RCW.
Passed the House March 21, 1993.
Passed the Senate April 14, 1993.
Approved by the Governor May 7, 1993.
Filed in Office of Secretary of State May 7, 1993.