

HOUSE BILL REPORT

HB 2525

As Reported By House Committee On:
Judiciary

Title: An act relating to bail bond recovery agents.

Brief Description: Requiring certification of bail bond recovery agents.

Sponsors: Representatives Carrell and Kastama.

Brief History:

Committee Activity:

Judiciary: 2/1/00, 2/3/00 [DPS].

Brief Summary of Substitute Bill

- Requires bail recovery agents to be certified by bail bond agencies before performing bail recovery agent functions.
- Requires the Department of Licensing to establish minimum standards bail recovery agents must meet before being eligible for certification.
- Subjects bail bond agencies to disciplinary action by the Department of Licensing for certifying unqualified bail recovery agents.
- Makes it a gross misdemeanor for a person to perform the functions of a bail recovery agent without being certified.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Carrell, Republican Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Esser; Kastama; Lovick and Schindler.

Minority Report: Do not pass. Signed by 4 members: Representatives Cox; Dickerson; Lantz and McDonald.

Staff: Trudes Hutcheson (786-7384).

Background:

In most cases, a criminal defendant has a right to be released on bail prior to trial. Criminal defendants who cannot afford to make bail often contract with bail bond agencies. The bail bond agency, after receiving collateral from the defendant or the defendant's family, posts the bail and guarantees that the defendant will appear in court.

When the state releases the defendant on bail, it essentially hands over "custody" of the defendant to the bail bond agency. If the defendant fails to appear, the court will demand that the defendant be surrendered or the bail bond will be forfeited. Bail bond agents often hire bail recovery agents to apprehend and surrender the defendant.

The bail recovery agent's authority to apprehend and surrender a defendant is derived from early case law. Courts have considered the recovery agent's right to recapture a fugitive as based on the private contractual right of the bail bond agency to exercise control over its principal.

Bail bond agencies are required to be licensed by the Department of Licensing and are subject to disciplinary action. However, there are no state statutes regulating bail recovery agents.

Generally, professional, occupational, and business licensing programs must be self-supporting by the members of the profession, occupation, or business. The department must set fees for each program that will defray the costs of administering that program.

Summary of Substitute Bill:

A bail bond agency may not employ or use the services of a bail recovery agent unless the bail bond agency certifies the bail recovery agent. A certificate issued to a bail recovery agent authorizes that person to perform the functions of a bail recovery agent for the bail bond agency issuing the certificate and only for the time period specified in the certificate.

The certified bail recovery agent is subject to the supervision of the bail bond agency issuing the certificate. Certificates issued by one agency may not be transferable to another agency. A person who is denied a certificate may not appeal the decision and does not have a cause of action against the bail bond agency or the department.

Before certifying the bail recovery agent, the bail bond agency must verify that the recovery agent has met the minimum standards established by the Department of Licensing. The bail bond agency may require any information and documentation that reasonably relates to the need to determine whether the recovery agent meets the standards. A bail bond agency must provide the department with a roster of bail recovery agents who are certified.

The department must establish minimum standards necessary for bail bond agencies to certify bail recovery agents. The standards must include:

- (a) a minimum level of education or experience appropriate for performing the duties of a bail recovery agent;
- (b) a minimum level of instruction in relevant areas of criminal and civil law;
- (c) a minimum level of instruction regarding appropriate use of force at different levels;
- (d) the nonexistence of felony criminal history;
- (e) adequate training of the use of firearms from the Criminal Justice Training Commission; and
- (f) possession of a concealed pistol license.

The certificate, developed by the department must include, among other things, a statement that the bail bond agency attests that the bail recovery agent has met the minimum standards required by the department.

A bail bond agency is subject to disciplinary action by the department if the agency uses the services of a bail recovery agent without issuing the proper certification or issues a certificate to a bail recovery agent who does not meet the minimum standards. Any costs associated with the department's enforcement is exempt from the general policy requiring licensing programs to be self-supporting. The department cannot use costs associated with enforcement of the provisions of the bill to increase the bail bond agencies' licensing fees.

It is a gross misdemeanor for a person to perform the functions of a bail recovery agent without first being certified by a bail bond agency licensed in the state.

Substitute Bill Compared to Original Bill: The substitute bill exempts costs relating to enforcement of the bill from the requirement that licensing programs be self-supporting. The department is prohibited from raising bail bond agencies' licensing fees based on costs associated with enforcement. The substitute bill also added the

provision stating that a person may not appeal and may not have a cause of action if the person is denied a certificate from a bail bond agency.

Appropriation: None.

Fiscal Note: Requested on January 30, 2000.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is in the state's interest to pick up fugitives, but there is no law currently regulating bail recovery agents. Although this group of people is small, it is critical to have some regulation over them because of the nature of the job they do. It is important to protect the public.

Testimony Against: Local law enforcement should be the ones to apprehend fugitives. The bail bond agencies are not the parties to be certifying or regulating bail recovery agents. The bill would make bail bond agencies liable for the acts of the bail recovery agents. It will cost the Department of Licensing money to implement the bill.

Testified: (In support) Representative Carrell, prime sponsor.

(Opposed) John McCroskey, Lewis County Sheriff; Sherry Appleton, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Shirley Williams and Holly Bishop, Washington Bail Agents Association.

(Concerns) Alan Rathbun and Pat Brown, Department of Licensing.