

SHB 1194 - S COMM AMD  
By Committee on Judiciary

NOT CONSIDERED 05/25/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. 2010 c 254 s 2 (uncodified) is amended to read as  
4 follows:

5 ((~~1~~)) Bail for the release of a person arrested and detained for  
6 a class A or B felony offense must be determined on an individualized  
7 basis by a judicial officer.

8 ((~~2~~) ~~This section expires August 1, 2011.~~)

9 **Sec. 2.** RCW 10.19.090 and 1986 c 322 s 2 are each amended to read  
10 as follows:

11 In criminal cases where a recognizance for the appearance of any  
12 person, either as a witness or to appear and answer, shall have been  
13 taken and a default entered, the recognizance shall be declared  
14 forfeited by the court, and at the time of adjudging such forfeiture  
15 said court shall enter judgment against the principal and sureties  
16 named in such recognizance for the sum therein mentioned, and execution  
17 may issue thereon the same as upon other judgments. If the surety is  
18 not notified by the court in writing of the unexplained failure of the  
19 defendant to appear within ((~~thirty~~)) fourteen calendar days of the  
20 date for appearance, then the forfeiture shall be null and void and the  
21 recognizance exonerated.

22 **Sec. 3.** RCW 10.19.100 and 1891 c 28 s 86 are each amended to read  
23 as follows:

24 The parties, or either of them, against whom such judgment may be  
25 entered in the superior or supreme courts, may stay said execution for  
26 sixty days from the date of the notification by the court by giving a  
27 bond with two or more sureties, to be approved by the clerk,

1 conditioned for the payment of such judgment at the expiration of sixty  
2 days, unless the same shall be vacated before the expiration of that  
3 time.

4 **Sec. 4.** RCW 10.19.160 and 1986 c 322 s 5 are each amended to read  
5 as follows:

6 (1) The surety on the bond may return a person to custody ((a  
7 person)) for good cause in a criminal case under the surety's bond if  
8 the surrender is accompanied by a notice of forfeiture or a notarized  
9 affidavit specifying the reasons for the surrender. If, upon motion by  
10 a party to the bail transaction, a court determines that good cause  
11 does not exist for the surety to surrender a person, the surety shall  
12 return the premium paid by, or on behalf of, the person, as well as any  
13 recovery fee. Good cause for surrender includes, but is not limited  
14 to, a substantial increase in the likelihood of the risk of flight,  
15 violation of a court order, failure to appear, or the concealment or  
16 intentional misrepresentation of information by the person, provided  
17 that good cause does not include failure to make timely payments to the  
18 surety for the bond premium. The surrender shall be made to the  
19 ((facility in which the person was originally held in custody or the))  
20 county or city jail affiliated with the court issuing the warrant  
21 resulting in bail.

22 (2) A violation of this section amounts to unprofessional conduct  
23 under RCW 18.185.110.

24 NEW SECTION. **Sec. 5.** The presiding judge of a court shall notify  
25 the administrative office of the courts when the court revokes or  
26 reinstates the justification or certification of a bail bond agent to  
27 post bonds in the court. The notice to the administrative office of  
28 the courts must include the reasons for the revocation or  
29 reinstatement. Upon receiving the notification, the administrative  
30 office of the courts shall notify superior courts and courts of limited  
31 jurisdiction statewide. No civil liability may be imposed by any court  
32 on the administrative office of the courts or its employees under this  
33 section except upon proof of bad faith or willful or wanton misconduct  
34 or gross negligence.

1       **Sec. 6.** RCW 18.185.010 and 2004 c 186 s 2 are each amended to read  
2 as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

5       (1) "Department" means the department of licensing.

6       (2) "Director" means the director of licensing.

7       (3) "Commission" means the criminal justice training commission.

8       (4) "Collateral or security" means property of any kind given as  
9 security to obtain a bail bond.

10       (5) "Bail bond agency" means a business that sells and issues  
11 corporate surety bail bonds or that provides security in the form of  
12 personal or real property to ensure the appearance of a criminal  
13 defendant before the courts of this state or the United States.

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

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

22       (8) "Licensee" means a bail bond agency, a bail bond agent, a  
23 qualified agent, or a bail bond recovery agent.

24       (9) "Branch office" means any office physically separated from the  
25 principal place of business of the licensee from which the licensee or  
26 an employee or agent of the licensee conducts any activity meeting the  
27 criteria of a bail bond agency.

28       (10) "Bail bond recovery agent" means a person who is under  
29 contract with a bail bond agent to receive compensation, reward, or any  
30 other form of lawful consideration for locating, apprehending, and  
31 surrendering a fugitive criminal defendant for whom a bail bond has  
32 been posted. "Bail bond recovery agent" does not include a general  
33 authority Washington peace officer or a limited authority Washington  
34 peace officer.

35       (11) (~~"Contract" means a written agreement between a bail bond~~  
36 ~~agent or qualified agent and a bail bond recovery agent for the purpose~~  
37 ~~of locating, apprehending, and surrendering a fugitive criminal~~  
38 ~~defendant in exchange for lawful consideration.~~

1       ~~(12))~~) "Planned forced entry" means a premeditated forcible entry  
2 into a dwelling, building, or other structure without the occupant's  
3 knowledge or consent for the purpose of apprehending a fugitive  
4 criminal defendant subject to a bail bond. "Planned forced entry" does  
5 not include situations where, during an imminent or actual chase or  
6 pursuit of a fleeing fugitive criminal defendant, or during a casual or  
7 unintended encounter with the fugitive, the bail bond recovery agent  
8 forcibly enters into a dwelling, building, or other structure without  
9 advanced planning.

10       (12) "Property bond" means a bail bond executed for compensation  
11 the security for which is real property, tangible personal property, or  
12 other assets.

13       (13) "Property bond agency" means a bail bond agency that issues  
14 property bonds.

15       (14) "Surety bond" means a bail bond that is guaranteed by an  
16 insurance company that has been qualified to transact surety insurance  
17 business in Washington state by the insurance commissioner.

18       (15) "Surety bond agency" means a bail bond agency that issues only  
19 surety bonds.

20       **Sec. 7.** RCW 18.185.040 and 2004 c 186 s 4 are each amended to read  
21 as follows:

22       (1) Applications for licenses required under this chapter shall be  
23 filed with the director on a form provided by the director. The  
24 director may require any information and documentation that reasonably  
25 relates to the need to determine whether the applicant meets the  
26 criteria, including fingerprints.

27       (2) Applicants for licensure or endorsement as a bail bond agent or  
28 a bail bond recovery agent must complete a records check through the  
29 Washington state patrol criminal identification system and through the  
30 federal bureau of investigation at the applicant's expense. Such  
31 record check shall include a fingerprint check using a Washington state  
32 patrol approved fingerprint card. The Washington state patrol shall  
33 forward the fingerprints of applicants to the federal bureau of  
34 investigation for a national criminal history records check. The  
35 director may accept proof of a recent national crime information  
36 center/III criminal background report or any national or interstate  
37 criminal background report in addition to fingerprints to accelerate

1 the licensing and endorsement process. The director is authorized to  
2 periodically perform a background investigation of licensees to  
3 identify criminal convictions subsequent to the renewal of a license or  
4 endorsement.

5 **Sec. 8.** RCW 18.185.070 and 1993 c 260 s 8 are each amended to read  
6 as follows:

7 (1) No bail bond agency license may be issued under the provisions  
8 of this chapter unless the qualified agent files with the director a  
9 bond, executed by a surety company authorized to do business in this  
10 state, in the sum of ten thousand dollars for a surety agency and one  
11 hundred thousand dollars for a property bond agency conditioned to  
12 recover against the agency and its servants, officers, agents, and  
13 employees by reason of its violation of the provisions of RCW  
14 18.185.100. The bond shall be made payable to the state of Washington,  
15 and anyone so injured by the agency or its servants, officers, agents,  
16 or employees may bring suit upon the bond in any county in which  
17 jurisdiction over the licensee may be obtained. The suit must be  
18 brought not later than two years after the failure to return property  
19 in accordance with RCW 18.185.100. If valid claims against the bond  
20 exceed the amount of the bond or deposit, each claimant shall be  
21 entitled only to a pro rata amount, based on the amount of the claim as  
22 it is valid against the bond, without regard to the date of filing of  
23 any claim or action.

24 (2) Every licensed bail bond agency must at all times maintain on  
25 file with the director the bond required by this section in full force  
26 and effect. Upon failure by a licensee to do so, the director shall  
27 suspend the licensee's license and shall not reinstate the license  
28 until this requirement is met.

29 (3) In lieu of posting a bond, a qualified surety agent may deposit  
30 ten thousand dollars in an interest-bearing account(~~(,—ten))~~ and a  
31 qualified property bond agent may deposit one hundred thousand dollars  
32 in an interest-bearing account.

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

35 **Sec. 9.** RCW 18.185.110 and 2008 c 105 s 4 are each amended to read  
36 as follows:

1 In addition to the unprofessional conduct described in RCW  
2 18.235.130, the following conduct, acts, or conditions constitute  
3 unprofessional conduct:

4 (1) Violating any of the provisions of this chapter or the rules  
5 adopted under this chapter;

6 (2) Failing to meet the qualifications set forth in RCW 18.185.020,  
7 18.185.030, and 18.185.250;

8 (3) Knowingly committing, or being a party to, any material fraud,  
9 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
10 or device whereby any other person lawfully relies upon the word,  
11 representation, or conduct of the licensee. However, this subsection  
12 (3) does not prevent a bail bond recovery agent from using any pretext  
13 to locate or apprehend a fugitive criminal defendant or gain any  
14 information regarding the fugitive;

15 (4) Assigning or transferring any license issued pursuant to the  
16 provisions of this chapter, except as provided in RCW 18.185.030 or  
17 18.185.250;

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

26 (6) Entering into a contract, including a general power of  
27 attorney, with a person that gives the bail bond agent full authority  
28 over the person's finances, assets, real property, or personal  
29 property;

30 (7) Failing to keep records, maintain a trust account, or return  
31 collateral or security, as required by RCW 18.185.100;

32 ~~((+7))~~ (8) Any conduct in a bail bond transaction which  
33 demonstrates bad faith, dishonesty, or untrustworthiness;

34 ~~((+8))~~ (9) Violation of an order to cease and desist that is  
35 issued by the director under chapter 18.235 RCW;

36 ~~((+9))~~ (10) Wearing, displaying, holding, or using badges not  
37 approved by the department;

1        ~~((+10))~~ (11) Making any statement that would reasonably cause  
2 another person to believe that the bail bond recovery agent is a sworn  
3 peace officer;

4        ~~((+11))~~ (12) Failing to carry a copy of the contract or to present  
5 a copy of the contract as required under RCW 18.185.270(1);

6        ~~((+12))~~ (13) Using the services of an unlicensed bail bond  
7 recovery agent or using the services of a bail bond recovery agent  
8 without issuing the proper contract;

9        ~~((+13))~~ (14) Misrepresenting or knowingly making a material  
10 misstatement or omission in the application for a license;

11        ~~((+14))~~ (15) Using the services of a person performing the  
12 functions of a bail bond recovery agent who has not been licensed by  
13 the department as required by this chapter;

14        ~~((+15))~~ (16) Performing the functions of a bail bond recovery  
15 agent without being both (a) licensed under this chapter or supervised  
16 by a licensed bail bond recovery agent under RCW 18.185.290; and (b)  
17 under contract with a bail bond agent;

18        ~~((+16))~~ (17) Performing the functions of a bail bond recovery  
19 agent without exercising due care to protect the safety of persons  
20 other than the defendant and the property of persons other than the  
21 defendant; ~~((or~~

22        ~~+17))~~ (18) Using a dog in the apprehension of a fugitive criminal  
23 defendant;

24        (19) Surrendering a person without good cause pursuant to RCW  
25 10.19.160; or

26        (20) Failing to reasonably disclose, when requested by law  
27 enforcement, information within the bail agent's possession concerning  
28 the location of a fugitive criminal defendant.

29        NEW SECTION. Sec. 10. Sections 1 and 5 of this act are each added  
30 to chapter 10.19 RCW."

**NOT CONSIDERED 05/25/2011**

1        On page 1, line 1 of the title, after "Relating to" strike the  
2 remainder of the title and insert "bail; amending RCW 10.19.090,  
3 10.19.100, 10.19.160, 18.185.010, 18.185.040, 18.185.070, and  
4 18.185.110; amending 2010 c 254 s 2 (uncodified); and adding new  
5 sections to chapter 10.19 RCW."

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