

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141 Bail Bond Agents
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Judiciary Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. The Department of Financial Services, Division of Insurance Agent and Agency Services (DFS), issues licenses for temporary bail bond agents and bail bond agents.

A bail bond agent may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or the insurer that employs the bail bond agent. To be fully licensed, an applicant must complete a 120-hour basic certification course, provide proof of 1,540 hours of work under a temporary bail bond agent license, and pass a licensing exam.

A temporary bail bond agent must be accompanied by a supervising bail bond agent when apprehending, arresting, or surrendering defendants to the authorities. A person holding the temporary license must complete the required coursework and licensing exam within the four years prior to application for the temporary license, and cannot take the licensing exam unless he or she has completed 1,540 hours of supervised paid employment during a one-year period after obtaining the temporary license.

The bill eliminates the temporary bail bond license. Instead of completing a one-year apprenticeship, qualified applicants who are eligible to work in the United States and pass a criminal background check could become a bail bond agent or professional bail bond agent by completing a 120-hour basic certification course during the two years prior to application and passing a licensing exam.

The bill also increases the qualifications for a bail bond agent in charge of an agency or branch location; such person must have worked as a licensed and appointed bail bond agent during the two years prior to being designated as the agent in charge.

Additionally, the bill requires that continuing education be classroom based, elevates the punishment for assault and/or battery of a bail bond agent, and adjusts forfeiture laws to increase the amount of a bond a court returns to a bail bond agent or insurance carrier if the forfeiture of a bond is rescinded.

The bill may have an indeterminate, insignificant impact on state or local governments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1141.IBS

DATE: 1/31/2022

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. A bail bond agent posts a surety bond to secure the defendant's release from custody; the defendant provides money or other collateral to secure the bail bond and forfeits the premium (10 percent of the amount of bail set by the court) if he or she fails to appear in court or comply with other conditions of the bond. Bail bond agents must be licensed by DFS and appointed by insurance carriers to execute bail bonds. If a defendant fails to appear in court, the bail bond agent may apprehend and detain the defendant until the defendant is surrendered to the authorities.¹

Bail bond agents may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or insurer that employs the bail bond agent.²

Licensure as a Bail Bond Agent

DFS issues a temporary license that is effective for 18 months and permits a licensee to work under the direct supervision of a licensed and appointed bail bond agent; a limited surety license that allows a bail bond agent to execute bail bonds; and a professional bail bond agent that allows the agent to obtain collateral from a criminal defendant in return for the execution of a bail bond with the court.

To become a temporary bail bond agent, an applicant must have completed a 120-hour basic certification course during the four years prior to application and have an offer of employment from a supervising bail bond agent. A temporary bail bond agent must be accompanied by a supervising bail bond agent when apprehending, arresting, or surrendering defendants to the authorities. After one year of work under a temporary license (which must include at least 1,540 hours of paid employment under the supervision of a supervising bail bond agent), the temporary licensee may apply for a regular bail bond agent's license and take the required licensing examination.³

After completing the one-year apprenticeship, a temporary licensee who passes a licensing exam and criminal background check may become a:

- Bail bond agent (also known as limited surety agent) who may execute or countersign bail bonds in connection with judicial proceedings; or
- Professional Bail Bond Agent, who may pledge U.S. currency, postal money orders, or cashier's check as security for a bail bond in connection with a judicial proceeding and receives or is promised money or things of value in return.⁴

All applicants for bail bond licenses submit fingerprints for a national criminal background check and pay an application fee. Bail bond agents may not have been convicted of a felony, must be age 18 or older, and must be eligible to work in the United States. A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to DFS. A bail bond agent may not charge a premium other than the rate that has been approved by the Office of Insurance Regulation, and must retain records related to any bail bonds the agent has executed or countersigned for at least three years after the liability of the surety has been terminated. Additionally, bail bond agents must register with the sheriff and the clerk of the circuit court in the county where the bail bond agent resides. Bail bond agents may not solicit clients at a jail, prison, or courthouse, and may not pay fees for referrals from any person working in the law enforcement community.⁵

¹ Ss. 648.24 and 624.26, F.S. Also see Department of Financial Services, Division of Consumer Services, *Bail Bonds Overview*, <https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited Jan. 28, 2022).

² S. 648.355, F.S.

³ *Id.* and R. 69B-221.051, F.A.C.

⁴ S. 648.25, F.S.

⁵ Ss. 648.355, 648.33, 648.34, 648.35, 648.36, 648.382, 648.42, and 648.44, F.S.

Effect of the Bill

The bill eliminates the requirement that a person who wishes to be licensed as a bail bond agent serve a one-year apprenticeship under a supervising bail bond agent.

To do this, the bill deletes all statutory language related to the temporary bail agent license, including the definition of a temporary bail bond agent, as well as qualifications for licensure as a temporary bail bond agent, appointment as a temporary bail bond agent, and all cross references to the term temporary bail bond agent.

Ownership of a Bail Bond Agency

The owner of a bail bond agency must be a licensed and appointed bail bond agent.⁶ The owner or operator of a bail bond agency must designate a primary bail bond agent who is responsible for the overall operation and management of a bail bond agency location and file the name and license number of the primary bail bond agent and the address of the bail bond agency with DFS. A primary bail bond agent may supervise only one location, is responsible for hiring employees and may not employ or contract with any person who has been found guilty of a felony.⁷

Effect of the Bill

The bill requires that the primary bail bond agent who is designated to supervise a bail bond agency or branch location must have worked as a licensed and appointed bail bond agent during the two years prior to being designated as the agent in charge of a bail bond agency or branch location.

Continuing Education

Bail bond agents must complete at least 14 hours of continuing education every two years.⁸ Schools that offer continuing education must be approved and certified by DFS, and must offer a minimum of three classroom-instruction continuing education classes per calendar year. Continuing education classes must consist of at least two hours of approved coursework and be taught by a supervising instructor who is approved by DFS.⁹

Effect of the Bill

The bill adds the words “classroom instruction” to the continuing education requirements, to ensure that bail bond agents are taking the required hours of continuing education in the presence of a supervising instructor.

Assault or Battery on Law Enforcement Officers

Florida law increases criminal penalties for assault and/or battery of the following persons, while engaged in the lawful performance of their duties: law enforcement officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, law enforcement explorer, traffic infraction enforcement officer, parking enforcement specialist, person licensed as a security officer and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college.¹⁰

⁶ S. 648.285, F.S.

⁷ Ss. 648.25(6) and 648.387, F.S.

⁸ S. 648.385, F.S.

⁹ S. 648.386, F.S.

¹⁰ S. 784.07(2), F.S.

The law elevates assault and/or battery upon any of the persons listed above from a second-degree to first-degree misdemeanor. Battery is elevated from a first-degree misdemeanor to a third-degree felony. Aggravated assault is elevated from a third-degree felony to a second-degree felony. And aggravated battery is elevated from a second-degree felony to a first-degree felony.¹¹

Effect of the Bill

The bill adds bail bond agent to the list of persons for whom the offenses of assault and/or battery are reclassified to provide stiffer penalties.

Forfeiture of a Bail Bond

When a defendant in a criminal case who has been released on bond fails to appear in court on the required date and at the required time, the court declares any bonds or money deposited as bail forfeited.¹² If a defendant surrenders or is apprehended and surrendered to the authorities within two years of forfeiture, the court rescinds forfeiture of a bond, based on the following schedule:

- Within 90 days of forfeiture, the court rescinds up to 100 percent of the bond;
- Within 180 days of forfeiture, the court rescinds up to 95 percent of the bond;
- Within 270 days of forfeiture, the court rescinds up to 90 percent of the bond;
- Within one year of forfeiture, the court rescinds up to 85 percent of the bond; and
- Within two years of forfeiture, the court rescinds up to 50 percent of the bond.¹³

Effect of the Bill

The bill includes the death of a criminal defendant as a reason for the court to rescind the forfeiture of a bond and eliminates statutory language that provided discretion in the amount of forfeiture that must be rescinded. Under the amended schedule, if a defendant surrenders, is apprehended and surrendered to the authorities, or dies within two years of forfeiture, the court must rescind the forfeiture of a bond based on the following schedule:

- Within 90 days of forfeiture, the court rescinds 100 percent of the bond;
- Within 180 days of forfeiture, the court rescinds 95 percent of the bond;
- Within 270 days of forfeiture, the court rescinds 90 percent of the bond;
- Within one year of forfeiture, the court rescinds 85 percent of the bond; and
- Within two years of forfeiture, the court rescinds 50 percent of the bond.

Additionally, if the state is not willing to seek extradition of a defendant from any jail or prison even though the surety agent or insurer pledges to pay the costs of returning the defendant to court, the bill requires the court to rescind forfeiture of a bond.

Effective Date

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 648.25, F.S., Definitions.

Section 2. Amends s. 648.27, F.S., Licenses and appointments; general.

Section 3. Amends 648.285, F.S., Bond agency; ownership requirements.

¹¹ *Id.*

¹² S. 903.26, F.S.

¹³ S. 903.28, F.S.

Section 4. Amends s. 648.30, F.S., Licensure and appointment required; prohibited acts; penalties.

Section 5. Amends 648.31, F.S., Appointment taxes and fees.

Section 6. Amends s. 648.34, F.S., Bail bond agents; qualifications.

Section 7. Amends s. 648.355, F.S., Temporary limited license as Limited surety agent or professional bail bond agent; pending examination.

Section 8. Amend s. 648.382, F.S., Appointment of bail bond agents and temporary bail bond agents; effective date of appointment.

Section 9. Amends s. 648.386, F.S., Qualifications for prelicensing and continuing education schools and instructors.

Section 10. Creates s. 648.3875, F.S., Primary bail bond agents; qualifications.

Section 11. Amends s. 648.39, F.S., Termination of appointment of managing general agents, bail bond agents, and temporary bail bond agents.

Section 12. Repeals s. 648.41, F.S., Termination of appointment of temporary bail bond agents.

Section 13. Amends 648.42, F.S., Registration of bail bond agents.

Section 14. Amends s. 648.44, F.S., Prohibitions; penalty.

Section 15. Amends s. 648.441, F.S., Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.

Section 16. Amends s. 648.50, F.S., Effect of suspension, revocation upon associated licenses and licensees.

Section 17. Amends s. 784.07, F.S., Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 18. Amends s. 843.021, F.S., Unlawful possession of a concealed handcuff key.

Section 19. Amends s. 903.28, F.S., Remission of forfeiture; conditions.

Section 20. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a positive fiscal impact on bail bond agencies because the bill adds an additional reason for the court to rescind the forfeiture of a bond (death of the defendant) and eliminates discretion in the amount of a forfeited bond that must be rescinded.

D. FISCAL COMMENTS:

Changes to licensing laws related to bail bond agents and bail bond agencies would temporarily increase the administrative workload at DFS because agency rules and procedures, and accompanying forms would require revision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires amendments to existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not indicate what would happen to existing temporary bail bond licenses when temporary bail bond provisions are removed from the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES