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HOUSE BILL 2423

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Hope, Hurst, and Kelley

Read first time 01/13/12. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to bail for felony offenses; amending RCW  
2 10.19.090, 10.19.100, 10.19.160, 18.185.010, 18.185.040, 18.185.070,  
3 18.185.100, and 18.185.110; and adding a new section to chapter 10.19  
4 RCW.

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

6 **Sec. 1.** RCW 10.19.090 and 1986 c 322 s 2 are each amended to read  
7 as follows:

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

1           **Sec. 2.** RCW 10.19.100 and 1891 c 28 s 86 are each amended to read  
2 as follows:

3           The parties, or either of them, against whom such judgment may be  
4 entered in the superior or supreme courts, may stay said execution for  
5 sixty days from the date of the notification by the court by giving a  
6 bond with two or more sureties, to be approved by the clerk,  
7 conditioned for the payment of such judgment at the expiration of sixty  
8 days, unless the same shall be vacated before the expiration of that  
9 time.

10           **Sec. 3.** RCW 10.19.160 and 1986 c 322 s 5 are each amended to read  
11 as follows:

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

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

30           NEW SECTION. **Sec. 4.** A new section is added to chapter 10.19 RCW  
31 to read as follows:

32           The presiding judge of a court shall notify the administrative  
33 office of the courts when the court revokes or reinstates the  
34 justification or certification of a bail bond agent to post bonds in  
35 the court. The notice to the administrative office of the courts must  
36 include the reasons for the revocation or reinstatement. Upon

1 receiving the notification, the administrative office of the courts  
2 shall notify superior courts and courts of limited jurisdiction  
3 statewide. No civil liability may be imposed by any court on the  
4 administrative office of the courts or its employees under this section  
5 except upon proof of bad faith or willful or wanton misconduct or gross  
6 negligence.

7 **Sec. 5.** RCW 18.185.010 and 2004 c 186 s 2 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

30 (9) "Branch office" means any office physically separated from the  
31 principal place of business of the licensee from which the licensee or  
32 an employee or agent of the licensee conducts any activity meeting the  
33 criteria of a bail bond agency.

34 (10) "Bail bond recovery agent" means a person who is under  
35 contract with a bail bond agent to receive compensation, reward, or any  
36 other form of lawful consideration for locating, apprehending, and  
37 surrendering a fugitive criminal defendant for whom a bail bond has

1 been posted. "Bail bond recovery agent" does not include a general  
2 authority Washington peace officer or a limited authority Washington  
3 peace officer.

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

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

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

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

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

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

27 **Sec. 6.** RCW 18.185.040 and 2004 c 186 s 4 are each amended to read  
28 as follows:

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

34 (2) Applicants for licensure or endorsement as a bail bond agent or  
35 a bail bond recovery agent must complete a records check through the  
36 Washington state patrol criminal identification system and through the  
37 federal bureau of investigation at the applicant's expense. Such

1 record check shall include a fingerprint check using a Washington state  
2 patrol approved fingerprint card. The Washington state patrol shall  
3 forward the fingerprints of applicants to the federal bureau of  
4 investigation for a national criminal history records check. The  
5 director may accept proof of a recent national crime information  
6 center/III criminal background report or any national or interstate  
7 criminal background report in addition to fingerprints to accelerate  
8 the licensing and endorsement process. The director is authorized to  
9 periodically perform a background investigation of licensees to  
10 identify criminal convictions subsequent to the renewal of a license or  
11 endorsement.

12 **Sec. 7.** RCW 18.185.070 and 1993 c 260 s 8 are each amended to read  
13 as follows:

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

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

36 (3) In lieu of posting a bond, a qualified surety agent may deposit

1 ten thousand dollars in an interest-bearing account(~~(,—ten)~~) and a  
2 qualified property bond agent may deposit one hundred thousand dollars  
3 in an interest-bearing account.

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

6 **Sec. 8.** RCW 18.185.100 and 2004 c 186 s 8 are each amended to read  
7 as follows:

8 (1)(a) Every qualified agent shall keep adequate records for three  
9 years of all collateral and security received, all trust accounts  
10 required by this section, and all bail bond transactions handled by the  
11 bail bond agency, as specified by rule. The records shall be open to  
12 inspection without notice by the director or authorized representatives  
13 of the director.

14 (b) The department may audit licensee trust accounts every two  
15 years unless the licensee submits a financial report prepared by a  
16 certified public accountant to the department on an annual basis.

17 (2) Every qualified agent who receives collateral or security is a  
18 fiduciary of the property and shall keep adequate records for three  
19 years of the receipt, safekeeping, and disposition of the collateral or  
20 security. Every qualified agent shall maintain a trust account in a  
21 federally insured financial institution located in this state. All  
22 moneys, including cash, checks, money orders, wire transfers, and  
23 credit card sales drafts, received as collateral or security or  
24 otherwise held for a bail bond agency's client shall be deposited in  
25 the trust account not later than the third banking day following  
26 receipt of the funds or money. A qualified agent shall not in any way  
27 encumber the corpus of the trust account or commingle any other moneys  
28 with moneys properly maintained in the trust account. Each qualified  
29 agent required to maintain a trust account shall report annually under  
30 oath to the director the account number and balance of the trust  
31 account, and the name and address of the institution that holds the  
32 trust account, and shall report to the director within ten business  
33 days whenever the trust account is changed or relocated or a new trust  
34 account is opened.

35 (3) Whenever a bail bond is exonerated by the court, the qualified  
36 agent shall, within five business days after written notification of

1 exoneration, return all collateral or security to the person entitled  
2 thereto.

3 (4) Records of contracts for fugitive apprehension must be retained  
4 by the bail bond agent and by the bail bond recovery agent for a period  
5 of three years.

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

8 In addition to the unprofessional conduct described in RCW  
9 18.235.130, the following conduct, acts, or conditions constitute  
10 unprofessional conduct:

11 (1) Violating any of the provisions of this chapter or the rules  
12 adopted under this chapter;

13 (2) Failing to meet the qualifications set forth in RCW 18.185.020,  
14 18.185.030, and 18.185.250;

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

22 (4) Assigning or transferring any license issued pursuant to the  
23 provisions of this chapter, except as provided in RCW 18.185.030 or  
24 18.185.250;

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

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

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

3        ~~((+7))~~ (8) Any conduct in a bail bond transaction which  
4 demonstrates bad faith, dishonesty, or untrustworthiness;

5        ~~((+8))~~ (9) Violation of an order to cease and desist that is  
6 issued by the director under chapter 18.235 RCW;

7        ~~((+9))~~ (10) Wearing, displaying, holding, or using badges not  
8 approved by the department;

9        ~~((+10))~~ (11) Making any statement that would reasonably cause  
10 another person to believe that the bail bond recovery agent is a sworn  
11 peace officer;

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

14        ~~((+12))~~ (13) Using the services of an unlicensed bail bond  
15 recovery agent or using the services of a bail bond recovery agent  
16 without issuing the proper contract;

17        ~~((+13))~~ (14) Misrepresenting or knowingly making a material  
18 misstatement or omission in the application for a license;

19        ~~((+14))~~ (15) Using the services of a person performing the  
20 functions of a bail bond recovery agent who has not been licensed by  
21 the department as required by this chapter;

22        ~~((+15))~~ (16) Performing the functions of a bail bond recovery  
23 agent without being both (a) licensed under this chapter or supervised  
24 by a licensed bail bond recovery agent under RCW 18.185.290; and (b)  
25 under contract with a bail bond agent;

26        ~~((+16))~~ (17) Performing the functions of a bail bond recovery  
27 agent without exercising due care to protect the safety of persons  
28 other than the defendant and the property of persons other than the  
29 defendant; ~~((or~~

30        ~~(+17))~~ (18) Using a dog in the apprehension of a fugitive criminal  
31 defendant;

32        (19) Surrendering a person without good cause pursuant to RCW  
33 10.19.160; or

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

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