

SECOND REGULAR SESSION

SENATE BILL NO. 896

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLAND.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2672S.01I

AN ACT

To repeal sections 374.700, 374.705, 374.710, 374.715, 374.725, 374.735, 374.740, 374.755, 374.757, 374.763, 544.640, and 544.650, RSMo, and to enact in lieu thereof twenty-three new sections relating to licensing of surety recovery agents, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.700, 374.705, 374.710, 374.715, 374.725, 374.735, 374.740, 374.755, 374.757, 374.763, 544.640, and 544.650, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 374.695, 374.700, 374.702, 374.704, 374.705, 374.715, 374.716, 374.717, 374.719, 374.735, 374.740, 374.755, 374.757, 374.763, 374.764, 374.783, 374.784, 374.785, 374.786, 374.787, 374.788, 374.789, and 544.640, to read as follows:

374.695. Sections 374.695 to 374.789 may be known and shall be cited as the "Professional Bail Bondsman and Surety Recovery Agent Licensure Act".

374.700. As used in sections [374.700 to 374.775] **374.695 to 374.789**, the following terms shall mean:

(1) "Bail bond agent", a surety agent or an agent of a property bail bondsman who is duly licensed [under] **pursuant to** the provisions of sections 374.700 to 374.775, is employed by and is working under the authority of a licensed general bail bond agent;

(2) "Bail bond or appearance bond", a bond for a specified monetary amount which is executed by the defendant and a qualified licensee pursuant to sections 374.700 to 374.775, and which is issued to a court or authorized officer as security for the subsequent court appearance of the defendant upon the defendant's release

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

from actual custody pending the appearance;

[2] (3) "Department", the department of insurance of the state of Missouri;

[3] (4) "Director", the director of the department of insurance;

(5) "Fugitive recovery", the tracking down, recapturing, and surrendering to the custody of a court a fugitive who has violated a bail bond agreement;

[4] (6) "General bail bond agent", a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

(7) "Insurer", any surety insurance company, which is qualified by the department to transact surety business in Missouri;

(8) "Licensee", a bail bond agent or a general bail bond agent;

[5] (9) "Property bail bondsman", a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;

[6] (10) "Surety bail bond agent", any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor;

[7] (11) "Surety recovery agent", a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, ~~[excluding]~~ **including** a bail bond agent or general bail bond agent[.];

(12) "Taking of bail" or "take bail", the acceptance by a person authorized to take bail of the undertaking of a sufficient surety for the appearance of the defendant according to the terms of the undertaking or that the surety will pay to the court the sum specified. Taking of bail or take bail does not include the fixing of the amount of bail and no person other than a competent court shall fix the amount of bail.

374.702. 1. No person shall engage in the bail bond business as a bail bond agent or a general bail bond agent without being licensed as provided in sections 374.695 to 374.789.

2. No judge, attorney, court official, law enforcement officer, state, county or municipal employee, who is either elected or appointed, shall be licensed as a bail bond agent or a general bail bond agent.

3. A licensed bail bond agent shall not execute or issue an appearance bond in this state without holding a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered

power of attorney referencing the general bail bond agent or insurer.

4. No bail bond agent shall hold an appointment and execute or issue bonds in this state for more than one general bail bond agent at a time.

5. A person licensed as a bail bond agent shall hold the license for at least four years prior to owning or being an officer of a licensed general bail bond agent.

6. A general bail bond agent shall not engage in the bail bond business:

(1) Without having been licensed as a general bail bond agent pursuant to sections 374.695 to 374.789;

(2) Except through an agent licensed as a bail bond agent pursuant to sections 374.695 to 374.789.

7. A general bail bond agent shall not permit any unlicensed person to solicit or engage in the bail bond business on the general bail bond agent's behalf, except for individuals who are employed solely for the performance of clerical, stenographic, investigative, or other administrative duties, which do not require a license pursuant to sections 374.695 to 374.789.

8. Any person who is convicted of a violation of this section is guilty of a class A misdemeanor. For any subsequent convictions, a person who is convicted of a violation of this section is guilty of a class D felony.

9. Nothing in sections 374.695 to 374.789 shall be construed to prohibit any person from posting or otherwise providing a bail bond in connection with any legal proceeding, provided that such person receives no fee, remuneration, or consideration therefor.

374.704. 1. Every applicant for a bail bond agent license or a general bail bond agent license shall apply on forms furnished by the director.

2. The application of a bail bond agent shall be accompanied by a duly executed general power of attorney issued by the general bail bond agent or insurer for whom the bail bond agent will be acting. Upon issuance of the license, a bail bond agent shall not issue an appearance bond exceeding the monetary amount for each recognizance which is specified in and authorized by the general power of attorney filed with the director until the director receives a duly executed qualifying power of attorney from the general bail bond agent or insurer evidencing or authorizing increased monetary limits or amounts for the recognizance.

3. An application for a general bail bond agent license shall be accompanied by proof that the applicant is a Missouri sole proprietorship, corporation, or an individual who is a resident of the state. A corporation shall file proof that its most recent annual franchise tax has been paid to the department of revenue as

provided in chapter 147, RSMo. A bail bond agent or general bail bond agent may not conduct a bail bond business in any name other than the name licensed by the department. Each name used to conduct a bail bond business shall be separately licensed under the provisions of sections 374.695 to 374.789.

374.705. 1. The department shall administer and enforce the provisions of sections [374.700 to 374.775] **374.695 to 374.789**, prescribe the duties of its officers and employees with respect to sections [374.700 to 374.775] **374.695 to 374.789**, and promulgate, pursuant to section 374.045 and chapter 536, RSMo, such rules and regulations within the scope and purview of the provisions of sections [374.700 to 374.775] **374.695 to 374.789**, as the director considers necessary and proper for the effective administration and interpretation of the provisions of sections [374.700 to 374.775] **374.695 to 374.789**.

2. The director shall set the amount of all fees authorized and required by the provisions of sections [374.700 to 374.775] **374.695 to 374.789**, by rules and regulations promulgated pursuant to chapter 536, RSMo. All such fees shall be set at a level designed to produce revenue which shall not substantially exceed the cost and expense of administering the provisions of sections [374.700 to 374.775] **374.695 to 374.789**.

374.715. 1. Applications for examination and licensure as a bail bond agent [or], general bail bond agent **or surety recovery agent** shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is at least twenty-one years of age, **has a high school diploma or general educational development certificate (GED)**, is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department.

2. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that the applicant[,] or, if the applicant is a corporation [or partnership], that each officer [or partner] thereof has completed at least [two] **four** years as a bail bond agent[, as defined in sections 374.700 to 374.775], and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri[, which]. **The** assignment shall become effective upon the applicant's violating any provision of sections [374.700 to 374.775] **374.695 to 374.789**. The assignment required by this section shall be in the form[,] and executed in the manner[,] prescribed by the department. **The director may require by regulation additional assignments of assets of the general bail bond agent when the circumstances of the business of the general bail bond agent warrants additional funds.**

374.716. 1. **Every general bail bond agent licensed in this state and every**

insurer doing a surety business in this state shall file with the department the power of attorney form that will be used in the state of Missouri.

2. Every bail bond agent shall account for each power of attorney assigned by the general bail bond agent on a weekly basis and remit all sums collected and owed to the general bail bond agent pursuant to their written contract. The general bail bond agent shall maintain the weekly accounting and remittance records for a period of three years. Such records shall be subject to inspection by the director or his or her designee during regular business hours or at other reasonable times.

3. For every bond written in this state, the licensee shall provide to the principal or any person who is a party to the bail contract or any person providing funds or collateral for bail on the principal's behalf a copy of the bail contract, power of attorney, prenumbered written receipt for acceptance of money or other collateral for the taking of bail.

4. The power of attorney and receipt for acceptance of money or other collateral shall be in the form prescribed by the department.

374.717. No insurer or licensee, court, or law enforcement officer shall:

(1) Pay a fee or rebate or give or promise anything of value in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond to:

(a) A jailer, policeman, peace officer, committing judge, or any other person who has power to arrest or to hold in custody any person; or

(b) Any public official or public employee;

(2) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(3) Pay a fee or rebate or give promise of anything of value to the principal or anyone in the principal's behalf;

(4) Accept anything of value from a principal except the premium and expenses incurred; provided that, the licensee shall be permitted to accept collateral security or other indemnity from the principal in accordance with the provisions of section 374.719.

374.719. 1. A licensee may accept collateral security from the principal in a fiduciary capacity which collateral shall be returned upon final termination of liability on the bond. When a licensee accepts collateral, the licensee shall provide a prenumbered written receipt, which shall include in detail a full account of the collateral received by the licensee. The acceptance of collateral security by a bail bond agent shall be reported to the general bail bond agent.

2. The collateral security required by the licensee shall be reasonable in

relation to the amount of the bond.

3. If a failure to appear, absconding or attempt to abscond, or a judgment of forfeiture on the bond has occurred, the collateral security may be used to reimburse the licensee for any costs and expenses incurred associated with the forfeiture.

4. The general bail bond agent shall retain records of the acceptance, return or judgment of forfeiture resulting in the use of the collateral to reimburse the licensee for a period of three years. Such records shall be subject to inspection by the director or his or her designee during regular business hours or at other reasonable times.

374.735. 1. The department may, in its discretion, grant a license without requiring an examination to a bail bond agent who has been licensed in another state immediately preceding his **or her** applying to the department, if the department is satisfied by proof adduced by the applicant that [his]:

(1) **The qualifications of the other state are at least equivalent to the requirements for initial licensure as a bail bond agent in [Missouri under] this state pursuant to the provisions of sections [374.700 to 374.775.] 374.695 to 374.789, provided that the other state licenses Missouri residents in the same manner; and**

(2) **The applicant has no suspensions or revocations of a license to engage in the bail bond or fugitive recovery business in any jurisdiction.**

2. Every applicant for a license pursuant to this section, upon showing the necessary qualifications as provided in this section, shall be required to pay the same fee as the fee required to be paid by resident applicants.

3. Within the limits provided in this section, the department may negotiate reciprocal compacts with licensing entities of other states for the admission of licensed bail bond agents from Missouri in other states.

374.740. Any person applying to be licensed as a nonresident [bail bond agent or nonresident] general bail bond agent who has been licensed in another state shall devote fifty percent of his **or her** working time in the state of Missouri and shall file proof with the director of insurance as to his **or her** compliance, and accompany his **or her** application with the fee set by the [board] **director by regulation** and, if applying for a nonresident general bail bond agent's license, with a duly executed assignment of twenty-five thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. Failure to comply with this section will result in revocation of the nonresidence license. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. All licenses issued [under] **pursuant to** this section shall be subject to the same renewal requirements set for other licenses issued [under] **pursuant to** sections [374.700 to 374.775] **374.695 to**

374.789.

374.755. 1. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections [374.700 to 374.775] **374.695 to 374.789**, or any person who has failed to renew or has surrendered his **or her** license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of the profession licensed under sections [374.700 to 374.775] **374.695 to 374.789**;

(2) **[Having entered a plea of guilty or having been found guilty of a felony] Final adjudication and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for a felony or crime involving moral turpitude, whether or not sentence is imposed;**

(3) Use of fraud, deception, misrepresentation or bribery in securing any license [issued pursuant to sections 374.700 to 374.775] or in obtaining permission to take any examination [given or] required pursuant to sections [374.700 to 374.775] **374.695 to 374.789**;

(4) Obtaining or attempting to obtain any compensation as a member of the profession licensed by sections [374.700 to 374.775] **374.695 to 374.789**, by means of fraud, deception or misrepresentation;

(5) **Misappropriation of the premium, collateral, or other thing of value given to a bail bond agent or a general bail bond agent for the taking of bail, incompetency, misconduct, gross negligence, fraud, or misrepresentation [or dishonesty] in the performance of the functions or duties of the profession licensed or regulated by sections [374.700 to 374.775] 374.695 to 374.789;**

(6) Violation of[, or assisting or enabling any other person to violate, any provision of sections 374.700 to 374.775 or of any lawful rule or regulation promulgated pursuant to sections 374.700 to 374.775] **any provisions of or any obligations imposed by the laws of this state, department of insurance rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations or subpoenas;**

(7) Transferring a license or permitting another person to use a license of the licensee;

(8) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections [374.700 to 374.775] **374.695 to 374.789**, granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) Being finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice the profession

licensed or regulated by sections [374.700 to 374.775] **374.695 to 374.789**, who is not currently licensed and eligible to practice [under] **pursuant to** sections [374.700 to 374.775] **374.695 to 374.789**;

(11) [Paying a fee or rebate, or giving or promising anything of value, to a jailer, policeman, peace officer, judge or any other person who has the power to arrest or to hold another person in custody, or to any public official or employee, in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof] **Acting in the capacity of an attorney at a trial or hearing of a person for whom the attorney is acting as surety**;

(12) [Paying a fee or rebate, or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond;] **Failing to respond to a department inquiry and failing to appear before the director or his or her authorized representative when summoned pursuant to a duly issued subpoena or subpoena duces tecum; or**

(13) [Paying a fee or rebate, or giving or promising anything of value, to the principal or anyone in his behalf;] **Failing to provide a copy of the bail contract, power of attorney, prenumbered written receipt for acceptance of money or other collateral for the taking of bail to the principal, any person who is a party to the bail contract or any person providing funds or collateral for bail on the principal's behalf.**

[(14) Participating in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.]

2. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the causes stated in subsection 1 of this section have been met, the [department] **director** may [do any or all of the following:

- (1) Censure the person involved;
- (2) Place the person involved on probation on such terms and conditions as the department deems appropriate for a period not to exceed ten years;
- (3) Suspend, for a period not to exceed three years, the license of the person involved;
- (4) Revoke the license of the person involved] **suspend or revoke the license or enter into an agreement for a monetary or other penalty pursuant to section 374.280.**

3. **In lieu of filing a complaint at the administrative hearing commission, the director and the bail bond agent or general bail bond agent may enter into an agreement for a monetary or other penalty pursuant to section 374.280.**

4. **In addition to any other remedies available, the director may issue a cease and desist order or may seek an injunction in a court of competent**

jurisdiction pursuant to the provisions of section 374.046 whenever it appears that any person is acting as a bail bond agent or general bail bond agent without a license or violating any other provisions of sections 374.695 to 374.789.

374.757. 1. Any agent licensed by sections [374.700 to 374.775] **374.695 to 374.789** who intends to apprehend any person in this state shall inform law enforcement authorities in the city or county in which such agent intends such apprehension, before attempting such apprehension. Such agent shall present to the local law enforcement authorities a certified copy of the bond and all other appropriate paperwork identifying the principal and the person to be apprehended. Local law enforcement may accompany the agent. Failure of any agent to whom this section applies to comply with the provisions of this section shall be a class A misdemeanor for the first violation and a class D felony for subsequent violations; and shall also be a violation of section 374.755 and may in addition be punished pursuant to that section.

2. The surety recovery agent shall inform the local law enforcement in the county or city where such agent is planning to enter a residence. Such agent shall have a certified copy of the bond and all appropriate paperwork to identify the principal. Local law enforcement, when notified, may accompany the surety recovery agent to that location to keep the peace if an active warrant is effective for a felony or misdemeanor. If a warrant is not active, the local law enforcement officers may accompany the surety recovery agent to such location. Failure to report to the local law enforcement agency is a class A misdemeanor. For any subsequent violations, failure to report to the local law enforcement agency is a class D felony.

374.763. 1. If any final judgment ordering forfeiture of a defendant's bond is not paid within the period of time ordered by the court, the court shall notify the department of the failure to satisfy such judgment. The director shall draw upon the assets of the surety, remit the sum to the court, and obtain a receipt of such sum from the court. The director may take action as provided by section 374.755 [or 374.430], regarding the license of the surety and any bail bond agents writing upon the surety's liability.

2. The department shall furnish to the presiding judge of each circuit court of this state, on at least a monthly basis, a list of all duly licensed and qualified bail bond agents and general bail bond agents whose licenses are not subject to pending suspension or revocation proceedings, and who are not subject to unsatisfied bond forfeiture judgments. In lieu of such list, the department may provide this information to each presiding judge in an electronic format.

374.764. 1. The director shall examine and inquire into all violations of the bail bond law of the state, and inquire into and investigate the bail bond business transacted in this state by any bail bond agent, general bail bond agent, or surety recovery agent.

2. The director or any of his or her duly appointed agents may compel the attendance before him or her, and may examine, under oath, the directors, officers, bail bond agents, general bail bond agents, surety recovery agents, employees, or any other person, in reference to the condition, affairs, management of the bail bond or surety recovery business or any matters relating thereto. He or she may administer oaths or affirmations and shall have power to summon and compel the attendance of witnesses and to require and compel the production of records, books, papers, contracts, or other documents, if necessary.

3. The director may make and conduct the investigation in person, or he or she may appoint one or more persons to make and conduct the same for him or her. If made by a person other than the director, the person duly appointed by the director shall have the same powers as granted to the director pursuant to this section. A certificate of appointment, under the official seal of the director, shall be sufficient authority and evidence thereof for the person to act. For the purpose of making the investigations, or having the same made, the director may employ the necessary clerical, actuarial, and other assistance.

374.783. 1. No person shall hold himself or herself out as being a surety recovery agent in this state, unless such person is licensed in accordance with the provisions of sections 374.783 to 374.789. Licensed bail bond agents and general bail bond agents performing fugitive recovery are required to obtain a surety recovery agent license pursuant to the provisions of sections 374.783 to 374.789.

2. The director shall have authority to license all surety recovery agents in this state. The director shall have control and supervision over the licensing of such agents and the enforcement of the terms and provisions of sections 374.783 to 374.789.

3. The director shall have power to:

(1) Set and determine the amount of the fees which sections 374.783 to 374.789 authorize and require. The fees shall be set at a level sufficient to produce revenue which shall not substantially exceed the cost and expense of administering sections 374.783 to 374.789; and

(2) Determine the sufficiency of the qualifications of applicants for a license.

4. The director shall license for a period of one year all surety recovery agents in this state who meet the requirements of sections 374.783 to 374.789.

374.784. 1. Applications for examination and licensure as a surety recovery agent shall be submitted on forms prescribed by the department and shall contain such information as the department requires, along with a copy of the front and back of a photographic identification card.

2. Each application shall be accompanied by proof satisfactory to the

director that the applicant is a citizen of the United States, is at least twenty-one years of age, has a high school diploma, or a general educational development certificate (GED). An applicant shall furnish evidence of such person's qualifications by completing an approved licensed surety recovery agent course with at least forty hours of minimum training at an institution of higher education or any institution or program approved by the department.

3. The basic course of training shall consist of at least forty hours of training, be taught by personnel with qualifications approved by the director and shall include instruction consisting of the following:

- (1) Areas of law:
 - (a) Constitutional law;
 - (b) Procedures for arresting defendants and surrendering defendants into custody;
 - (c) Civil liability;
 - (d) The civil rights of persons who are detained in custody;
 - (e) The use of force;
 - (f) Handcuffing techniques;
 - (g) Mace;
 - (h) Any certified law enforcement class approved by the department that would train surety recovery agents the proper procedure for handling defendants;
- (2) Procedures for field operations, including, without limitation:
 - (a) Safety and survival techniques;
 - (b) Searching buildings;
 - (c) Handling persons who are mentally ill or under the influence of alcohol or a controlled substance; and
 - (d) The care and custody of prisoners;
- (3) Skills required regarding:
 - (a) Writing reports, completing forms, and procedures for exoneration;
 - (b) Methods of arrest;
 - (c) Nonlethal weapons;
 - (d) Retention of weapons;
 - (e) Qualifications for the use of firearms;
 - (f) Defensive tactics; and
 - (g) Principals of investigation, including, without limitation, the basic principals of locating defendants who have not complied with the terms and conditions established by a court for their release from custody or the terms and conditions of a contract entered into with a surety;
- (4) The following subjects:

- (a) Demeanor in a courtroom;
- (b) First aid used in emergencies; and
- (c) Cardiopulmonary resuscitation.

4. The director may refuse to issue any license pursuant to sections 374.783 to 374.789, for any one or any combination of causes stated in section 374.787. The director shall notify the applicant in writing of the reason or reasons for refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission to appeal the refusal as provided by chapter 621, RSMo.

374.785. 1. The director shall issue a license for a period of one year to any surety recovery agent who is licensed in another jurisdiction and who:

(1) Has no violations, suspensions, or revocations of a license to engage in fugitive recovery in any jurisdiction; and

(2) Is licensed in a jurisdiction whose requirements are substantially equal to, or greater than, the requirements for a surety recovery agent license in Missouri at the time the applicant applies for a license.

2. For the purpose of surrender of the defendant, a surety may apprehend the defendant anywhere within the state of Missouri, before or after the forfeiture of the undertaking without personal liability for false imprisonment or may empower any surety recovery agent to make apprehension by providing written authority endorsed on a certified copy of the undertaking and paying the lawful fees.

3. Every applicant for a license pursuant to this section, upon making application and showing the necessary qualifications as provided in this section, shall be required to pay the same fee as required of resident applicants. Within the limits provided in this section, the director may negotiate reciprocal compacts with licensing entities of other states for the admission of licensed surety recovery agents from Missouri in other states.

374.786. 1. Every person licensed pursuant to sections 374.783 to 374.789 shall, before the license renewal date, apply to the director for renewal for the ensuing licensing period. The application shall be made on a form furnished to the applicant and shall state the applicant's full name, the applicant's business address, the address at which the applicant resides, the date the applicant first received a license, and the applicant's surety recovery agent identification number, if any.

2. A renewal form shall be mailed to each person licensed in this state at the person's last known address. The failure to mail the renewal form or the failure of a person to receive it does not relieve any person of the duty to be licensed and

to pay the license fee required nor exempt such person from the penalties provided for failure to be licensed.

3. Each applicant for renewal shall accompany such application with a renewal fee to be paid to the department for the licensing period for which renewal is sought.

4. The director may refuse to renew any license required pursuant to sections 374.783 to 374.789, for any one or any combination of causes stated in section 374.787. The director shall notify the applicant in writing of the reasons for refusal to renew and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

374.787. 1. The director may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any surety recovery agent or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) Violation of any provisions of, or any obligations imposed by, the laws of this state, department of insurance rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules, or regulations;

(2) Been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for a felony or crime involving moral turpitude, whether or not sentence is imposed;

(3) Using fraud, deception, misrepresentation, or bribery in securing a license or in obtaining permission to take any examination required by sections 374.783 to 374.789;

(4) Obtaining or attempting to obtain any compensation as a surety recovery agent by means of fraud, deception, or misrepresentation;

(5) Acting as a surety recovery agent or aiding or abetting another in acting as a surety recovery agent without a license;

(6) Incompetence, misconduct, gross negligence, fraud, or misrepresentation in the performance of the functions of duties of a surety recovery agent;

(7) Having revoked or suspended any license by another state.

2. After the filing of the complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the causes stated in subsection 1 of this section have been met, the director may suspend or revoke the license or enter into an agreement for a monetary or other penalty pursuant to section 374.280.

3. In lieu of filing a complaint with the administrative hearing commission, the director and the surety recovery agent may enter into an agreement for a monetary or other penalty pursuant to section 374.280.

4. In addition to any other remedies available, the director may issue a cease and desist order or may seek an injunction in a court of law pursuant to section 374.046, whenever it appears that any person is acting as a surety recovery agent without a license.

374.788. 1. A surety recovery agent having probable grounds to believe a subject, free on his or her bond, has failed to appear as directed by a court, has breached the terms of the subject's surety agreement, or has taken a substantial step toward absconding, may utilize all lawful means to apprehend the subject. To surrender a subject to a court a licensed surety recovery agent, having probable grounds to believe the subject is free on their bond, may:

(1) Detain a subject in a lawful manner, for a reasonable time; provided that in the event travel from another state is involved the detention period may include reasonable travel time not to exceed seventy-two hours;

(2) Transport a subject in a lawful manner from state to state and county to county to a place of authorized surrender; and

(3) Enter upon private or public property in a lawful manner to execute apprehension of a subject.

2. A surety recovery agent who apprehends a subject under the provisions of subsection 1 of this section shall surrender custody of the subject to the court of jurisdiction.

3. When a surety recovery agent is in the process of performing fugitive recovery, a photographic identification card shall be prominently displayed on the surety recovery agent's person.

374.789. 1. A person is guilty of a class D felony if he or she does not hold a valid surety recovery agent license or a bail bond license and commits any of the following acts:

(1) Holds himself or herself out to be a licensed surety recovery agent within this state;

(2) Claims that he or she can render surety recovery agent services; or

(3) Engages in fugitive recovery in this state.

2. Any person who engages in fugitive recovery in this state and wrongfully causes damage to any person or property, including, but not limited to, trespass, unlawful apprehension, unlawful detainment, or assault, shall be liable for such damages and may be liable for punitive damages.

544.640. 1. If, without sufficient cause or excuse, the defendant fails to appear

either in person or by legal counsel for trial or judgment, or upon any other occasion when his **or her** presence in court may be lawfully required, according to the condition of his **or her** recognizance, the court must direct the fact to be entered upon its minutes, and thereupon [the recognizance is forfeited, and the same shall be proceeded upon by scire facial to final judgment and execution thereon, although the defendant may be afterward arrested on the original charge, unless remitted by the court for cause shown.] **at the end of the court day the court may forfeit the bond and order an execution hearing not sooner than ninety days but not later than one hundred fifty days after the date the person failed to appear. Notice of the execution hearing shall be served within ten days of such failure to appear by certified mail to the surety's main office. Service shall be completed upon mailing of such certified notice.**

2. If at the execution hearing it is determined that the judgment should be entered, the court shall so order and a writ of scire facial shall be filed in the office of the clerk of the court where such judgment is entered.

3. The court shall issue a warrant for the defendant for failure to appear if forfeiture is entered on the bond.

4. If the bail bond agent provides proof of the incarceration of the defendant who failed to appear, or provides proof to the court that it is physically impossible for the defendant, bail bond agent or surety to satisfy the conditions of the bond through no fault of the bail bond agent or surety, the bail bond agent or surety shall be released from liability and all money and property deposited with the court shall be returned within ten days.

5. In cases in which subsection 2 of this section is not applicable, on application of the surety filed within two years of the payment of final judgment, the court shall order remission of one hundred percent of the bond amount to the surety under the following conditions:

(1) Provided the bond forfeiture has been paid, within one year after final judgment, such court shall direct remission of one hundred percent of the bond amount remitted to the surety if the surety locates the defendant in custody. Within thirty days of a two-year period following the final judgment, upon proof of incarceration, the surety shall be entitled to a refund of fifty percent of the bond amount; and

(2) Up to two years after final judgment, if the surety surrenders the principal to an authorized officer, or such surrender has been denied by an authorized officer, or the surety locates the defendant in custody in another jurisdiction and it is shown to the court by presentation of competent evidence from the surety or the holding institution that such surrender has been made or denied or that the defendant is in custody in another jurisdiction or that such

surrender has been made, the court shall direct that the judgment be marked satisfied and that the writ of execution, scire facial, be canceled.

The court shall notify the surety's main office by certified mail within ten days' notification of the defendant's incarceration.

6. A defendant shall be surrendered without the return of premium for the bond if the indemnitor attests in writing the desire to be released from the bond or if the surety or the bail agent discovers that the defendant is guilty of:

- (1) Failing to appear in court;
- (2) Changing his or her address without notifying the bail agent or surety in writing;
- (3) Concealing himself or herself;
- (4) Leaving the jurisdiction of the court without the written permission of his or her bail agent or surety or court;
- (5) Violating his or her contract with the bail agent or surety in a way that may do harm to the bail agent or the surety or violating his or her obligation to the court;
- (6) Being arrested for a crime other than a traffic violation where the penalty is an infraction or a misdemeanor;
- (7) Failing to pay any fee due to the bail agent or surety;
- (8) Providing false information to the bail agent or surety; or
- (9) Knowingly or unknowingly violating any other condition of the bail or bail bond contract.

7. Upon forfeiture of the bond, the court may order that the defendant's driver's license be suspended until such time as the defendant has satisfied the forfeiture.

8. The provisions of this section shall apply to all bail bonds.

9. As used in this section the term "bail bond" means the only form of security to ensure subsequent court appearances accepted by the courts in this state except for cash bonds or recognizance for people who are locals and who have not previously pleaded guilty to or been found guilty of failure to appear.

[374.710. 1. Except as otherwise provided in sections 374.700 to 374.775, no person or other entity shall practice as a bail bond agent or general bail bond agent, as defined in section 374.700, in Missouri unless and until the department has issued to him a license, to be renewed each year as hereinafter provided, to practice as a bail bond agent or general bail bond agent.

2. Nothing in sections 374.700 to 374.775 shall be construed to prohibit any person from posting or otherwise providing a bail bond in connection with any legal proceeding, provided that such person receives no fee, remuneration or consideration

therefor.]

[374.725. Any person who, on September 28, 1983, is acting in any capacity which would be classified as practicing as a bail bond agent or general bail bond agent under the provisions of sections 374.700 to 374.775 may continue to act in such capacity without being licensed under sections 374.700 to 374.775 for a period of twelve months from September 28, 1983.]

[544.650. Whenever any bail bond or recognizance has been given or entered into in any criminal proceedings, conditioned for the appearance of any person charged with, indicted for or convicted of any criminal offense, or for any other purpose, and the conditions thereof shall become broken or the same shall be forfeited, it shall be lawful and sufficient to serve the writ of scire facias or other writ or process which may be issued in such proceeding, either by delivering a duly certified copy of such writ or process to the person therein named, or by leaving such duly certified copy of such writ or process at the usual place of abode of the person therein named, with a member of his family over the age of fifteen years.]

Section B. Sections 374.695 to 374.789 of section A of this act shall become effective January 1, 2005.

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Bill

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