

SECOND REGULAR SESSION

SENATE BILL NO. 803

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 21, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2944.011

AN ACT

To repeal sections 374.700, 374.705, 374.720, 374.725, 374.730, 374.735, 374.740, 374.750, 374.755, 374.760, 374.765, 374.770, 374.775 and 575.030, RSMo 1994, and sections 374.710, 374.715 and 374.763, RSMo Supp. 1997, relating to the regulation of bail bondsmen, and to enact in lieu thereof forty-two new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 374.700, 374.705, 374.720, 374.725, 374.730, 374.735, 374.740, 374.750, 374.755, 374.760, 374.765, 374.770, 374.775 and 575.030, RSMo 1994, and sections 374.710, 374.715 and 374.763, RSMo Supp. 1997, are repealed and forty-two new sections enacted in lieu thereof, to be known as sections 575.030, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41, to read as follows:

575.030. 1. A person commits the crime of hindering prosecution if for the purpose of preventing the apprehension, prosecution, conviction or punishment of another for conduct constituting a crime he **or she**:

(1) Harbors or conceals such **other** person; or

(2) Knowingly withholds, upon inquiry, information regarding the location of such other person when that person is a fugitive who has violated a bail bond agreement; or

[(2)] **(3)** Warns such person of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law; or

[(3)] **(4)** Provides such person with money, transportation, weapon, disguise or other

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

means to aid [him] **the person** in avoiding discovery or apprehension; or

[4] (5) Prevents or obstructs, by means of force, deception or intimidation, anyone from performing an act that might aid in the discovery or apprehension of such person.

2. Hindering prosecution is a class D felony if the conduct of the other person constitutes a felony; otherwise hindering prosecution is a class A misdemeanor.

Section 1. Sections 1 to 34 of this act may be known and shall be cited as the "Professional Bail Bondsman Licensing Act".

Section 2. For the purposes of sections 1 to 41 of this act, the following terms mean:

(1) **"Admission to bail", an order from a competent court that the defendant be discharged from actual custody on bail and fixing the amount of the bail;**

(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 1 to 19 of this act 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 from actual custody pending the appearance;**

(3) **"Board", professional bail bondsman licensing board created in section 3 of this act;**

(4) **"Insurer", any surety company which is qualified to transact surety business in Missouri;**

(5) **"Licensee", a professional bail bond company or a professional bail bondsman;**

(6) **"Professional bail bondsman", an individual licensed as a professional bail bondsman by the board, who is a resident of this state and who acts through the authority of a professional bail bond company in pledging a bail bond as security in a judicial proceeding;**

(7) **"Professional bail bond company", an individual resident of this state, a Missouri firm, a partnership, a corporation or another business that is licensed as a professional bail bond company by the board that pledges a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value;**

(8) **"Surety", the person who becomes the surety for the appearance of the defendant in court;**

(9) **"Surety recovery agent", a person not performing the duties of a sworn peace officer who tracks down and captures a fugitive who has violated a bail bond agreement;**

(10) **"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.

Section 3. 1. There is hereby created within the division of professional registration in the department of economic development the "Professional Bail Bondsman Licensing Board". The board shall be composed of seven members to be appointed by the governor with the advice and consent of the senate. The members shall be appointed for terms of seven years; except that of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years and one for a term of seven years. Vacancies on the board shall be filled by appointment for the unexpired portion of the term.

2. The governor shall appoint the members as follows:

- (1)** Two licensed bail bond company owners;
- (2)** One chief of police from a Missouri municipality;
- (3)** One county sheriff;
- (4)** One county prosecuting attorney;
- (5)** One circuit judge or associate circuit judge; and
- (6)** One circuit clerk.

3. Any person who is appointed to fill a position on the board as provided in subdivisions (1) to (5) of subsection 2 of this section and who subsequently does not meet such qualification shall vacate such position and the governor shall appoint a successor to fill the unexpired term of such person.

4. The members of the board shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties on the board.

5. The board shall have authority to appoint an executive director and such other employees as shall be necessary to perform the board's duties.

Section 4. 1. No person shall engage in the bail bond business without being licensed as provided in sections 1 to 19 of this act.

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

3. A professional bail bondsman shall not execute or issue an appearance bond in this state without holding a valid appointment from a professional bail bond company and without attaching to the appearance bond an executed and numbered power of attorney referencing the professional bail bond company. An agent licensed as a professional bail bondsman shall hold such bondsman license for at least two years prior to owning or being an officer of a licensed professional bail bond company.

4. An insurer shall not execute an undertaking of bail without being licensed as a professional bail bond company.

5. A professional bail bond company shall not engage in the bail bond business:

(1) Without having been licensed as a professional bail bond company pursuant to sections 1 to 19 of this act;

(2) Except through an agent licensed as a professional bail bondsman pursuant to sections 1 to 19 of this act.

6. A professional bail bond company shall not permit any unlicensed person to solicit or engage in the bail bond business in the company'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 1 to 19 of this act.

7. Any person who violates a provision of this section is guilty of a class A misdemeanor.

Section 5. 1. Every applicant for a professional bail bondsman license or a professional bail bond company license shall apply on forms furnished by the board.

2. The application of a professional bail bondsman shall be accompanied by a duly executed general power of attorney issued by the professional bail bond company for whom the professional bail bondsman will be acting. Upon issuance of the license, a professional bail bondsman 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 board until the board receives a duly executed general power of attorney from the professional bail bond company evidencing or authorizing increased monetary limits or amounts for the recognizance.

3. An application for a professional bail bond company license shall be accompanied by proof that the applicant is a Missouri partnership, firm or 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 secretary of state as provided in chapter 147, RSMo, and has a one million dollar bond insuring against any damages to persons or property caused by a licensed surety recovery agent.

4. At the time of application for every professional bail bond company license there shall be paid to the board for the company license a fee of one thousand dollars. Each applicant for a professional bail bondsman license shall pay the board a license fee of one hundred dollars at the time of application, except that if an individual applicant is also an applicant for a professional bail bond company license, then the applicant shall not be required to pay the license fee for a professional bail bondsman but shall comply with all other requirements for licensure as a professional bail bondsman.

Section 6. Each applicant for a professional bail bondsman license shall file with the board:

(1) Written statements from at least three persons who know of the applicant's character;

(2) The applicant's fingerprint impressions submitted by a local law enforcement agency to the Missouri state highway patrol; and

(3) Such proof as the board may require that the applicant is competent, trustworthy, financially responsible, of good personal and business reputation and has not been convicted of a felony or any offense involving moral turpitude.

Section 7. No professional bail bondsman or professional bail bond company, 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 circuit 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) Participate in the capacity of an attorney:

(a) At a trial or hearing of a defendant on whose bond the person is a surety;

(b) To attempt to obtain settlement or dismissal of a case;

(c) To give or attempt to give any legal advice to a defendant on whose bond the person is a surety; or

(5) Accept anything of value from a principal except the premium; provided that, the licensee shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. The collateral security or other indemnity required by the licensee shall be reasonable in relation to the amount of the bond.

Section 8. 1. In order to determine the competence of each applicant for a professional bail bondsman license, the board shall require each applicant to submit to, and to pass to the satisfaction of the board, a written examination to be administered by the board and appropriate to the transaction of the bail bond business. Such examination shall be held in a location or locations at such times as provided by the board. Each applicant shall pay a nonrefundable examination fee of twenty-five dollars to the board at the time of application.

2. If the application is approved and if the examination fee has been paid, an

examination permit shall be issued to the applicant stating the time and place of the examination. If the applicant appears for the examination but fails to pass the examination, the applicant may apply for reexamination. The nonrefundable reexamination fee shall be fifteen dollars. If an applicant fails to pass the examination on two attempts, the board shall require a waiting period of one hundred twenty days before issuing a permit for reexamination.

Section 9. 1. An applicant for a professional bail bond company license shall file with the board an irrevocable letter of credit from a Missouri chartered bank or federally chartered bank in Missouri or a certificate of deposit. The letter of credit or certificate of deposit shall be approved by the board as to form and sufficiency and shall be conditioned upon faithful performance of the duties of the license.

2. The minimum amount of the letter of credit or certificate of deposit for any professional bail bond company initially licensed after August 1, 1998, shall be one hundred thousand dollars.

3. The minimum amount of the letter of credit or certificate of deposit for any professional bail bond company initially licensed on or before August 1, 1998, shall be as follows:

(1) On or before July 31, 1999, the amount shall be a total of twenty-five thousand dollars which shall consist of the previous minimum amount of ten thousand dollars and an additional fifteen thousand dollars;

(2) August 1, 1999, to July 31, 2000, the amount shall be a total of fifty thousand dollars which shall consist of the previous minimum amount of twenty-five thousand dollars and an additional twenty-five thousand dollars;

(3) August 1, 2000, to July 31, 2001, the amount shall be a total of seventy-five thousand dollars which shall consist of the previous minimum amount of fifty thousand dollars and an additional twenty-five thousand dollars;

(4) On or after August 1, 2001, the amount shall be a total of one hundred thousand dollars which shall consist of the previous minimum amount of seventy-five thousand dollars and an additional twenty-five thousand dollars.

4. No letter of credit or certificate of deposit shall be subject to termination or cancellation by either party in less than sixty days after the giving of written notice thereof to the other parties and to the board and after all liability of the party is discharged.

5. No termination or cancellation shall affect the liability of the surety or sureties on a bond incurred prior to the effective date of the termination or cancellation.

6. If during the term of the letter of credit or certificate of deposit any licensee shall be guilty of misconduct or malfeasance in such licensee's dealing with any court

or officer of the court or with any person or company in connection with any deposit or bail bond, the board may maintain a civil action before the circuit court of Cole County on the letter of credit or certificate of deposit or may maintain an administrative action on any certificate of deposit. The board may recover for the use and benefit of the person or persons aggrieved. The provisions of this subsection shall be in addition to all other remedies available to the aggrieved person and nothing in this subsection shall be construed as limiting the liability of a professional bail bond company or a professional bail bondsman.

7. The board may suspend the license of a licensee who is guilty of misconduct or malfeasance as provided in subsection 6 of this section until such time as the board recovers the full amount allowable or recovers for the benefit of the person or persons aggrieved, the amount of loss or injury sustained pursuant to subsection 6 of this section, and until such time as the licensee has filed with the board an additional letter of credit or certificate of deposit in the required amount. The board shall promptly notify such licensee as provided in subsection 9 of this section.

8. When a final civil judgment for court-ordered bond forfeitures is entered by a court of competent jurisdiction in this state as to a bail bond issued by the licensee and the judgment is not paid within thirty days thereafter, the court may send a copy of such judgment, duly certified by the clerk of such court, to the board and after having given proof to the board of service of process on the licensee in accordance with present laws governing service of process on defendants in other civil actions. The board may promptly make a claim on the surety for payment of the allowable amount of such licensee's letters of credit on behalf of such court or shall withdraw the amount of such licensee's certificate or certificates of deposit and shall transmit to the clerk of such court so much of such securities as are allowable. The board shall honor such judgments from the respective courts up to the limits set out in subsection 6 of this section.

9. Upon receipt of a judgment as provided in subsection 8 of this section and receipt of proof of notice of service on the licensee and after having sent notice by registered or certified mail to the licensee of the judgment to be paid the board may, twenty days after the date of such notice of the judgment to be paid, suspend the license of such licensee until such time as the judgment is paid or otherwise satisfied and until such time as the licensee has filed with the board another letter of credit or certificate of deposit in the required amount. The board shall promptly notify the licensee in writing by certified mail of the claims upon the licensee's letter of credit or certificates of deposit and shall also include a copy of the board's order of suspension.

10. If the allowable amount of the letter of credit or certificate of deposit filed with the board is not sufficient to pay or otherwise satisfy the judgments as to bail

bonds issued by the professional bail bond company in subsection 1 of this section, the board may promptly make a claim against the professional bail bond company on behalf of such court.

11. If a professional bail bond company fails to file with the board the additional letter of credit or certificate of deposit to maintain such license within ninety days from the effective date of the board's order of suspension as provided in subsection 7, 9 or 10 of this section, the board shall cancel the license of such licensee and shall promptly notify such licensee as provided in subsection 9 of this section.

12. Upon the nonrenewal, cancellation or revocation of any license provided for in sections 1 to 19 of this act, the board shall release to the licensee the qualifying bond or bonds or certificate or certificates of deposit filed with the board only upon the receipt of written documentation from all the courts in all the counties in which the licensee engaged in business that all bonds issued by such licensee have been exonerated and that no unpaid bond forfeitures remain outstanding, and that all civil judgments as to forfeitures on bonds issued by the licensee have been paid in full.

Section 10. 1. Before the issuance of a license under sections 1 to 19 of this act, every applicant for a license shall provide evidence of residency to the board, shall satisfy the board as to trustworthiness and competence, as applicable, and shall otherwise comply with the conditions and qualifications as provided in sections 1 to 19 of this act.

2. The board may refuse to issue a license to an applicant who fails to comply with the provisions of sections 1 to 19 of this act or any rule or regulation adopted by the board pursuant to sections 1 to 19 of this act. The board may refuse to issue a license to any applicant that has made a material misrepresentation in the application for such license.

3. Upon the approval and issuance of any license provided for in sections 1 to 19 of this act, the board shall give written notice of the issuance of such license to the circuit clerk of each county in the state. Upon revocation or suspension of a license, the board shall give written notice to that effect to the circuit clerk in each county in the state. The circuit clerk in each county shall maintain a complete record of registrations, revocations and suspensions. The circuit clerk shall notify the surety holder in the event of a continuance. The board shall furnish the circuit clerks of all counties with a list of renewal licenses.

Section 11. 1. Every license issued pursuant to sections 1 to 19 of this act shall be for a term expiring on December thirty-first following the date of issuance, and such license may be renewed for the ensuing calendar year upon the filing of a renewal application and payment of appropriate fees.

2. The board may refuse to renew a license for any cause for which issuance of

the original license could have been refused or for the licensee's violation of any of the provisions of sections 1 to 19 of this act or the rules and regulations promulgated pursuant to sections 1 to 19 of this act.

3. Every licensee shall be required to file a renewal application, in the form and subject matter as prescribed by the board.

4. At the time of application for renewal of a professional bail bond company license, there shall be paid to the board for the company's renewal license a fee of one thousand dollars. Each professional bail bondsman shall pay a fee of one hundred dollars for renewal of the license; except that, if the applicant for renewal also holds a professional bail bond company license, then the applicant shall not be required to pay a renewal fee for a professional bail bondsman license.

Section 12. Any person may file a complaint stating facts constituting an alleged violation of sections 1 to 19 of this act. The complaint shall be signed under penalty of perjury. The board shall investigate any alleged violation of sections 1 to 19 of this act. Any person aggrieved by the findings of the board may appeal as provided in chapter 536, RSMo. All hearings shall be conducted and judicial review of the board's decision may be had in the manner provided by chapter 536, RSMo.

Section 13. 1. The board may suspend for up to twelve months or revoke or refuse to continue any license issued pursuant to the provisions of sections 1 to 19 of this act if, after notice and hearing, the board determines that the licensee or any member of a company which is so licensed has:

(1) Violated any provision of, or any obligation imposed by, sections 1 to 19 of this act or any lawful rule, regulation or order of the board or has been convicted of a felony or any offense involving moral turpitude;

(2) Made a material misstatement in the application for license, in the application for renewal license, or in the financial statement which accompanies the application or renewal application for license as a professional bail bond company;

(3) Committed any fraudulent or dishonest acts or practices or demonstrated incompetency or untrustworthiness to act as a licensee;

(4) Required as a condition of the licensee executing a bail bond that the principal agree to engage the services of a specified attorney;

(5) Signed, executed or issued bonds with endorsements in blank or prepared or issued fraudulent or forged bonds or power of attorney;

(6) Failed in the applicable regular course of business to account for and to pay premiums held by the licensee in a fiduciary capacity to the professional bail bond company or other person entitled thereto; or

(7) Failed to comply with the provisions of the laws of this state, or rule, regulation or order of the board for which issuance of the license could have been

refused had it then existed and been known to the board.

2. The act or conduct of any professional bail bondsman who acts within the scope of the authority delegated to the professional bail bondsman shall also be deemed the act or conduct of the professional bail bond company for which the professional bail bondsman is acting as agent.

3. If the board finds that one or more grounds exist for the suspension or revocation of any license, the board may in its discretion request that formal charges be filed against the violator and that penalties as provided in sections 4 and 9 of this act be imposed.

4. If the board finds that one or more grounds exist for the suspension or revocation of a license and that the license has been suspended within the previous twenty-four months, then the board shall revoke the license. The board may not again issue a license pursuant to sections 1 to 19 of this act to any person or entity whose license has been revoked.

5. If the board determines that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in the board's order, a summary suspension of a license issued pursuant to sections 1 to 19 of this act may be ordered pending an administrative hearing before the board, which shall be promptly instituted.

6. If a professional bail bond company license is suspended or revoked, no member of such company, or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation, unless the board determines upon substantial evidence that such member, officer or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

Section 14. 1. Any person who holds a valid license pursuant to sections 374.700 to 374.775, RSMo, on the effective date of this section may continue to engage in the bail bond business without licensure pursuant to sections 1 to 19 of this act for a period of one hundred twenty days after the effective date of this section without being guilty of a violation of section 4 of this act.

2. Any individual who holds a valid license pursuant to sections 374.700 to 374.775, RSMo, on the effective date of this section and who applies for a license pursuant to sections 1 to 19 of this act within ninety days after the effective date of this section shall not be required to take an examination as provided in section 8 of this act.

3. Any person who holds a valid license pursuant to sections 374.700 to 374.775, RSMo, shall be entitled to a credit on the license fee required by section 5 of this act. The credit shall be a prorated proportion of the fee as provided in section 374.705, RSMo, based on the number of whole months remaining in the licensing period.

Section 15. The board may only adopt rules where specifically authorized under sections 1 to 34 of this act and only to the extent that the rules are reasonable and necessary to accomplish the duties delegated. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 1 to 34 of this act shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

Section 16. 1. The minimum compensation for giving bond or depositing money or property as bail on any bond shall be not less than fifty dollars.

2. If a bail bond or appearance bond, issued by a licensee pursuant to sections 19 to 34 of this act shall be replaced with another bail bond or appearance bond because of the licensee's violation of any provision of the laws of this state or any rule, regulation or order of the board, the licensee who violates any provision and causes a replacement to be required shall pay all of the premium amount for the replacement bond, in an amount not to exceed the amount of the original bond, without any contribution from the respective defendant or principal.

Section 17. When a licensee accepts collateral, the licensee shall give a prenumbered written receipt for such collateral, and such receipt shall provide in detail a full account of the collateral received by the licensee.

Section 18. The board shall prescribe by rule the form for the written bail bonds which shall be distributed to professional bail bond companies. Each professional bail bond company shall file a bail bond report quarterly with the board. The report shall include the following information concerning each bail bond:

- (1) Current status of the bond whether pending disposition or exonerated;**
- (2) To whom the bond was written;**
- (3) The date the bail bond was written;**
- (4) The defendant and the charge against the defendant;**
- (5) The court in which the charges are pending;**
- (6) The amount of the bail bond.**

Section 19. The chief law enforcement officer of any facility having individuals or prisoners in their custody shall post in plain view in the facility housing such individuals or prisoners a list of professional bail bondsmen who have registered with the circuit clerk. Any professional bail bondsman may register with the circuit clerk to be included on such list. The professional bail bondsmen shall be listed in the order

in which they initially register with the clerk. The list provided by the circuit clerk shall include the name of the professional bail bondsman, the company the bail bondsman represents and the bail bondsman's office address and phone number.

Section 20. A professional bail bond company as defined in section 3 of this act, a qualified surety as defined in section 3 of this act and an automobile club or association may issue a bond card to a person licensed as a motor vehicle operator which shall constitute evidence of the undertaking of bond by the company to assure the appearance in court for the offense charged of a person arrested or issued a traffic citation for a motor vehicle accident or traffic law violation up to and including the amount in dollars stated upon the face of the bond card.

Section 21. 1. A surety shall be:

(1) A professional bail bondsman acting through a professional bail bond company; or

(2) A resident of the state and an owner of visible property, over and above that exempt from execution, to the value of the sum in which bail is required, which shall be worth that amount after the payment of the surety's debts and liabilities.

2. The person or persons offered as surety shall be examined on oath in regard to their qualifications as surety, and any officer authorized to take bail is authorized to administer the oath, reduce the statements on oath to writing and require the person offered as surety to sign the statement. Other proof may also be taken with regard to the sufficiency of the surety. Prior to submission to the court, the statement shall also be signed by the sheriff or chief of police in the jurisdiction where the defendant is charged. Proof that the surety is a professional bail bondsman shall be deemed sufficient proof of the sufficiency of the surety and the surety shall be accepted by all courts in this state or by any officer of the court authorized to take bail.

3. No person shall be taken as surety unless the court is satisfied, from proof and examination on oath, of the sufficiency of the person according to the requirements of this section. Where more than one person is offered as surety, they shall be deemed sufficient if, in the aggregate, they possess the qualifications required.

Section 22. 1. The officer of the court who takes bail shall be officially responsible for the sufficiency of the surety if taken other than through a professional bail bondsman.

2. If the surety is not a professional bail bondsman, the officer shall file a statement with the court describing the property of the surety upon which the sufficiency of the surety is based. The description of the property shall include the value of the property. The statement shall also be signed by the sheriff or chief of police in the jurisdiction where the defendant is charged.

3. The officer who takes bail shall give a written receipt for the collateral. The

receipt shall give in detail a full account of the collateral received.

4. An officer who takes bail shall not be liable for any unsecured bond order by a judicial officer.

Section 23. No attorney, solicitor or counselor at law or in equity, clerk, sheriff or other person concerned in the execution of any process shall become a personal guarantor or surety in any criminal proceeding unless such proceeding involves a family member within the second degree of consanguinity of such person.

Section 24. 1. The undertaking of the surety, other than by a professional bail bondsman, shall be in substantially the following form:

..... (name of defendant), being in custody, charged with the offense of (naming or briefly describing the charges), and being admitted to bail in the sum of dollars, (name of surety), of (surety's place of residence), hereby undertakes that the above named defendant shall appear in the court on the day of its term to answer to such charge, and shall at all times render himself/herself amenable to the orders and process of such court in the prosecution of such charge, and, if convicted, shall render himself/herself in execution thereof; or if he/she fails to perform either of these conditions, that I will pay to the appropriate court the sum of dollars.

2. If the surety is a professional bail bondsman, the undertaking of the surety shall be in a form prescribed by the regulations of the board.

Section 25. 1. At any time before the forfeiture of the bond, the surety may surrender the defendant, or the defendant may surrender himself or herself, to the jailer of the county in which the offense was committed; provided that the surrender shall be accompanied by a certified copy of the bail bond to be delivered to the jailer, who shall detain the defendant in custody thereon as upon a commitment and give a written acknowledgment of the surrender. The surety shall upon such surrender be exonerated.

2. For the purpose of surrendering the defendant, the surety may obtain a certified copy of the bail bond or recognizance from the officer having the original documents. The surety may then arrest the defendant at any place in the state, or give written authorization for any licensed surety recovery agent to do so.

3. The surety may arrest the defendant without the certified copy as provided in subsection 2 of this section.

4. If the surety has good cause for surrendering the defendant and has complied with the provisions of this section in surrendering the defendant, there shall be no requirement that the surety return part or all of the premium paid for the bail bond.

Section 26. No prosecution, appeal, nonresident or attachment bond, nor any other statutory bonds of any party, plaintiff or defendant in any court, in this state, nor

any recognizance in any criminal cause in this state, shall be declared null and void for the want of form, if the intent of the bond can be plainly deduced from the body of the bond or recognizance.

Section 27. 1. No bail bond or recognizance shall be deemed to be invalid by reason of any variance between its stipulations and the provisions of sections 1 to 34 of this act, or of the failure of the judge or officer to transmit or deliver the bail bond or recognizance at the times provided in sections 1 to 34 of this act, or of any other irregularity, as long as it appears that the defendant was legally in custody, was charged with a public offense, and was discharged therefrom by reason of the giving of the bond or recognizance, and that it can be ascertained from the bond or recognizance that the surety undertook that the defendant should appear before a judge for the trial thereof.

2. If no day is fixed for the appearance, or an impossible day, or a day in vacation, a bond or recognizance for the defendant's appearance before a judge shall be considered as binding the defendant so to appear and surrender himself or herself into custody for an examination of the charge in twenty days from the time of the defendant's giving the bond or recognizance. A bond or recognizance for the defendant's appearance for trial in court shall be considered as binding the defendant to appear and surrender himself or herself into custody on the first day of the next term of the court which shall commence more than ten days after the giving of the bond or recognizance.

Section 28. 1. Whenever the defendant is admitted to bail in a specified sum, the defendant may deposit the sum with an officer authorized by law or rule of court to accept bail for the court in which the trial is directed to be had and shall receive from such officer a certificate of the deposit; upon delivering such certificate to the officer who has the defendant in custody, the defendant shall be discharged.

2. After bail has been taken, a deposit may, in like manner, be made of the sum mentioned in the bail bond, which shall exonerate the surety.

3. Where money is deposited, the circuit or municipal clerk shall deposit the money in the court fund or the city treasury, whichever is appropriate. The money shall be paid according to the orders of the court having jurisdiction to try the offense, and the circuit clerk or city treasurer and their sureties shall be liable for the money on their official bond. Upon judgment being rendered against a defendant for a fine and court costs, the court rendering judgment may order any money deposited as provided in this section to be applied to the payment of such fine and costs.

4. The provisions of this section shall not apply to a bail bond of a bail bondsman.

Section 29. 1. The court in which a prosecution for an offense is pending may,

by an order, direct the defendant to be arrested and committed to jail until legally discharged, after the defendant has given bail, or deposited money in lieu thereof, in the following cases:

(1) When by having failed to appear, a forfeiture of bail or of the money deposited has been incurred;

(2) Upon an indictment being found for an offense not bailable.

2. Upon the order being made, the clerk shall issue process for the arrest and recommitment of the defendant. If the order is made on account of subdivision (1) of subsection 1 of this section, the defendant shall be admitted to bail, in a sum to be fixed by the court and named in the process for the defendant's arrest.

Section 30. 1. If the defendant fails to appear for trial or judgment, or at any other time when the defendant's presence in court may be lawfully required, or to surrender himself or herself in execution of the judgment, the court may direct such fact be entered on the record, and shall issue an order requiring the surety to appear, on a date set by the court not less than one hundred eighty days after the issuance of the order, to show cause why the sum specified in the bail bond or the money deposited in lieu of bail should not be forfeited. The order shall also require the officer who was responsible for taking of bail to appear unless:

(1) The surety is a bail bondsman; or

(2) The officer accepted cash in the amount of bail.

2. The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant. If the defendant is surrendered, arrested or good cause is shown for the defendant's failure to appear before judgment is entered against the surety, the court shall exonerate the surety's liability under the bail bond. If the defendant has not surrendered or been arrested prior to judgment against the surety, the bail bond or money deposited in lieu of bail may be forfeited.

3. If before judgment is entered against the surety, the defendant is located in another state, and the location is known, the professional bail bondsman shall have the first opportunity to return such defendant to the proper court. If the bondsman is unable to return such defendant the appropriate law enforcement officers shall cause the arrest of the defendant and the surety shall be liable for the reasonable costs in returning the defendant to the court in an amount not to exceed the face value of the bail bond.

Section 31. When money is deposited in lieu of bail and the court finds that such money is forfeited, the circuit court or the city treasurer, whichever is appropriate, shall transfer such sum deposited as bail pursuant to section 56.310, RSMo, and section 166.131, RSMo.

Section 32. 1. No forfeiture of any appearance or bail bond shall be rendered in

the following cases:

(1) Where a court-appointed physician furnishes to the court a sworn statement showing that the principal in the bond is prevented from attending by some physical or mental disability; or

(2) Where a jailer, warden, superintendent or other responsible officer of the institution where the principal is being detained furnishes to the court a sworn affidavit showing that the principal in the bond is prevented from attending because the principal is being detained by authority of a claim of the federal or a state government.

2. The appearance or bail bond shall remain in full force and effect until the principal is physically or mentally able to appear or until a detainer against the principal is filed with the detaining authority.

Section 33. A bail bond shall be discharged within two years of issuance of the bond to the court unless forfeiture occurs or the case is continued and the surety notified. Prior to expiration of the two-year period the court shall give notice of any such discharge, forfeiture or continuance to the bail bond company.

Section 34. 1. A fee equal to ten dollars per bond shall be paid by a defendant to the bail bond company in addition to the premium, and the company shall collect and forward such fee quarterly to the director of revenue not later than the last day of the month following the end of the quarter in which the fee is paid. The fee shall be collected and reported upon such forms as may be prescribed by the director, and the director shall retain not more than three percent for cost of collection and shall deposit all other moneys in the "Professional Bail Bondsman Licensing Board Administration Fund" which is hereby created in the state treasury. Money in the fund shall be available by appropriation to the board to pay its administrative costs arising from its duties pursuant to sections 1 to 34 of this act. All interest earned on money deposited in the fund shall be credited to such fund.

2. Any bail bond company violating the provisions of this section requiring the collection and forwarding of fees shall, upon conviction, be guilty of a class D felony.

Section 35. 1. Sections 35 to 41 of this act shall be known as "The Surety Recovery Agent Licensure Act".

2. As used in sections 35 to 41 of this act, the following terms mean:

(1) "Board", the professional bail bondsman licensing board created in section 3 of this act;

(2) "Bounty hunt", the tracking down and recapturing of a fugitive who has violated a bail bond agreement;

(3) "Licensed surety recovery agent", a person who is licensed as a surety recovery agent by the board.

Section 36. 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 35 to 41 of this act.

2. The professional bail bondsman licensing board shall have authority to license all surety recovery agents in this state. The board shall have control and supervision over the licensing of such agents and the enforcement of the terms and provisions of sections 35 to 41 of this act.

3. The board shall have power to:

(1) Set and determine the amount of the fees which sections 35 to 41 of this act 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 35 to 41 of this act;

(2) Determine the sufficiency of the qualifications of applicants for licensure; and

(3) Issue credentials and identification documents and cards to surety recovery agents.

4. The board shall license all surety recovery agents in this state who meet the requirements of sections 35 to 41 of this act.

Section 37. 1. A candidate for a surety recovery agent's license shall be at least twenty-one years of age. A candidate shall furnish evidence of such person's qualifications by completing an approved licensed surety recovery agent course with at least one hundred sixty hours of minimum training at an institution of higher education or any institution approved by the board.

2. No license shall be granted unless the candidate or the professional bail bond company, as defined in section 1 of this act, employing such candidate has obtained a one million dollar bond insuring against any damages to persons or property caused by the candidate.

Section 38. 1. The board shall issue a license to any surety recovery agent who is licensed in another jurisdiction and who has had no violations, suspensions or revocations of a license to bounty hunt in any jurisdiction, provided that such person is licensed in a jurisdiction whose requirements are substantially equal to, or greater than, the requirements for licensure of surety recovery agents in Missouri at the time the applicant applies for licensure, the applicant has proof of a one million dollar bond and such professional bail bonding company employs a surety recovery agent holding a valid Missouri surety recovery license.

2. Any agent licensed in another jurisdiction who takes a fugitive into custody without employing a Missouri licensed surety recovery agent is guilty of kidnapping pursuant to section 565.110, RSMo.

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 the fee required to be paid by resident applicants. Within the limits provided in this section, the board may negotiate reciprocal compacts with licensing boards of other states for the admission of licensed surety recovery agents from Missouri in other states.

Section 39. 1. Every person licensed pursuant to sections 35 to 41 of this act shall, on or before the license renewal date, apply to the board for a licensure 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 blank form for the application for licensure renewal shall be mailed to each person licensed in this state at the person's last known address. The failure to mail the form of application or the failure of a person to receive it does not, however, 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 licensure renewal shall accompany such application with a licensure renewal fee to be paid to the director of the division of professional registration for the licensing period for which licensure renewal is sought.

Section 40. 1. A licensed surety recovery agent having probable grounds to believe a subject, free on their 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 rights available at common law to arrest 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 reasonable manner, for a reasonable time not to exceed seventy-two hours;

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

(3) Peacefully enter upon private or public property in a reasonable manner to execute an arrest of a subject.

2. Any such action taken shall not be deemed unlawful and shall not render the licensed surety recovery agent civilly or criminally liable.

Section 41. 1. A person is guilty of a class D felony if he or she does not hold a valid surety recovery agents 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) Bounty hunts in this state.

2. Any person who bounty hunts in this state and wrongfully causes damage to any person or property, including, but not limited to, trespass, unlawful arrest, unlawful detainment or assault, shall be liable for such damages and may be liable for punitive damages not to exceed one million dollars or the face value of the amount of the bond.

[374.700. As used in sections 374.700 to 374.775, 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 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) "Department", the department of insurance of the state of Missouri;

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

(4) "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;

(5) "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) "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.]

[374.705. 1. The department shall administer and enforce the provisions of sections 374.700 to 374.775, prescribe the duties of its officers and employees with respect to sections 374.700 to 374.775, 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 as the director considers necessary and proper for the effective administration and interpretation of the provisions of sections 374.700 to 374.775.

2. The director shall set the amount of all fees authorized and required by the provisions of sections 374.700 to 374.775 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.]

[374.710. 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.]

[374.715. Applications for examination and licensure as a bail bond agent or general bail bond 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, and is of good moral character. Each application shall be accompanied by the examination and application fee set by the department. 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 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 assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. The assignment required by this section shall be in the form, and executed in the manner, prescribed by the department.]

[374.720. 1. Each applicant for licensure as a general bail bond agent, after complying with this section and the provisions of section 374.715, shall be issued a license by the department unless grounds exist under section 374.755 for denial of a license.

2. Each applicant for examination and licensure as a bail bond agent, after complying with the provisions of section 374.715, shall appear for examination at the time and place specified by the department. Such examination shall be as prescribed by the director as provided under section 375.018, RSMo, and shall be designed to test the applicant's knowledge and expertise in the area of surety bonds in general and the practice of a bail bond agent, as defined in sections 374.700 to 374.775, in particular. The applicant shall be notified of the result of the examination within twenty working days of the examination. Any applicant who fails such examination may, upon reapplication and payment of the reexamination fee set by the department, retake the examination.]

[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.]

[374.730. All licenses issued to bail bond agents and general bail bond agents under the provisions of sections 374.700 to 374.775 shall be renewed annually, which renewal shall be in the form and manner prescribed by the department and shall be accompanied by the renewal fee set by the department.]

[374.735. 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 applying to the department, if the department is satisfied by proof adduced by the applicant that his qualifications are at least equivalent to the requirements for initial licensure as a bail bond agent in Missouri under the provisions of sections 374.700 to 374.775.]

[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 working time in the state of Missouri and shall file proof with the director of insurance as to his compliance, and accompany his application with the fee set by the board 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 this section shall be subject to the same renewal requirements set for other licenses issued under sections 374.700 to 374.775.]

[374.750. The department may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755. The department shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.]

[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 or any person who has failed to renew or has surrendered his 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;

(2) Having entered a plea of guilty or having been found guilty of a felony;

(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;

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

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession licensed or regulated by sections 374.700 to 374.775;

(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;

(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 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 who is not currently licensed and eligible to practice under sections 374.700 to 374.775;

(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;

(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;

(13) Paying a fee or rebate, or giving or promising anything of value, to the principal or anyone in his 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 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.]

[374.760. Each general bail bond agent shall file, between the first and tenth day of each month, sworn affidavits with the department stating that there are no unsatisfied judgments against him. Such affidavits shall be in the form and manner prescribed by the department.]

[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.]

[374.765. 1. Any person who practices as a bail bond agent or general bail bond agent, or who purports to be a bail bond agent, or general bail bond agent, as defined in section 374.700, without being duly licensed under sections 374.700 to 374.775 is:

- (1) For the first such offense, guilty of an infraction;
- (2) For the second and each subsequent offense, guilty of a class A misdemeanor.

2. Any licensed bail bond agent who knowingly violates the provisions of one or more of subdivisions (3), (4), (10), (11), (12), (13), (14), or (15) of subsection 1 of section 374.755 shall be guilty of a class B misdemeanor.]

[374.770. 1. If there is a breach of the contract of the bond, the court in which the case is pending shall declare a bond forfeiture, unless the surety upon such bond informs the court that the defendant is incarcerated somewhere within the United States. If forfeiture is not ordered because the defendant is incarcerated somewhere within the United States, the surety is responsible for the return of the defendant. If bond forfeiture is ordered and the surety can subsequently prove the defendant is incarcerated somewhere

within the United States, then the bond forfeiture shall be set aside and the surety be responsible for the return of the defendant. When the surety notifies the court of the whereabouts of the defendant, a hold order shall be placed by the court having jurisdiction on the defendant in the state in which the defendant is being held.

2. In all instances in which a bail bond agent or general bail bond agent duly licensed by sections 374.700 to 374.775 has given his bond for bail for any defendant who has absented himself in violation of the condition of such bond, the bail bond agent or general bail bond agent shall have the first opportunity to return such defendant to the proper court. If he is unable to return such defendant, the state of Missouri shall return such defendant to the proper court for prosecution, and all costs incurred by the state in so returning a defendant may be levied against the bail bond agent or general bail bond agent in question.]

[374.775. When issuing bonds of one thousand dollars or less, licensed bail bond agents or general bail bond agents may charge a minimum premium of fifty dollars. In connection with such bonds no bail bond agent, general bail bond agent, or corporation shall charge or receive any additional fee for investigations or services rendered in connection with the execution of the bond.]

Bill

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