

① NABIC
Bill

BAIL FUGITIVE APPREHENSION BILL

AN ACT relating to apprehension of those who are in fugitive status as result of absconding from a criminal court thereby having their appearance bond declared forfeit or who have materially violated a condition of said bond.

Sec. 1. Certain terms, as used in this Act, shall mean:

"Bail fugitive": a defendant in a pending criminal case who has been released from custody under a financially secured appearance bond and has had such bond declared forfeit or who has violated a bond condition whereby apprehension and reincarceration are permitted.

"Bail licensee": a retail seller of criminal court appearance bonds who is duly authorized to operate in such capacity in this State.

"Person": an individual, partnership, corporation or any other legally recognized business association.

Sec. 2. Authorizing apprehension of bail fugitives:

(1) No person shall represent himself or herself to be a bail enforcement agent, bounty hunter or other similar title in this state.

(2) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain or arrest a principal on a bond, wherever issued, unless that person is a fully qualified bail licensee, or a regular employee of such licensee, in this or another State.

(3) Any person who violates any provision of this section commits a felony punishable as provided in (Proper Cite).

Sec. 3. Mandatory rules of procedure and conduct of bail licensee when apprehending bail fugitives:

(1) In performing a bail fugitive apprehension a bail licensee shall comply with all laws applicable to such apprehension.

(2) The bail licensee, when apprehending a bail fugitive, operates solely on his own and in his own interest except when contracted by another bail licensee to apprehend a particular bail fugitive and in such instance he shall be acting exclusively on the behalf of the contracting bail licensee.

(3) Before apprehending a bail fugitive, a bail licensee must have in his possession proper documentation of authority to apprehend.

(4) The bail licensee shall not represent himself in any manner as being a police officer or public official of any type. No apparel or equipment such as a badge shall be used that could mislead anyone to believe that the bail licensee is a public official. Paramilitary dress and masks are prohibited.

(5) The bail licensee shall notify local law enforcement of his intent to apprehend a bail fugitive prior to taking any action.

(6) The bail licensee shall request local law enforcement help and shall make the arrest personally only if a local, state or federal law enforcement agent cannot or will not make the arrest.

(7) Unless entry is refused, the bail licensee shall not forcibly enter a premises unless identification of the bail fugitive has been made.

(8) The ball licensee shall not carry a firearm unless properly licensed to do so, and no firearm will be drawn or discharged unless the ball licensee has good reason to believe that licensee or a member of the public is in imminent physical danger.

(9) VIOLATION of any element of this Section shall be punishable as a Misdemeanor with a fine of up to Five Thousand Dollars (\$5,000.00).

② PBW
Bill

MODEL LEGISLATION

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

BAIL ENFORCEMENT RECOVERY ACT

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**PROFESSIONAL BAIL AGENTS OF THE UNITED STATES
BAIL ENFORCEMENT RECOVERY ACT**

Summary

This Act would set standards for qualifications for Bail Enforcement and Recovery Agents. In addition, this Act would establish licensing and training criteria for such persons. The Act would also set educational standards and establish penalties and conditions for violations under the Act.

Section 1. Title - This Act may be known as the Bail Enforcement Recovery Act.

Section 2. Definitions - As used in this Act:

(A) "Appearance Bond" means a written undertaking by the accused and his/her sureties in which the accused obtains release from custody prior to trial.

(B) "Surety" means the depositor/owner of the cash of a cash bond; the property owner(s) of a property bond, the guarantor of a personal bond, or the insurer, if a surety bond.

(C) "Surety Bond" means an appearance bond written by a representative, properly licensed by the commissioner and appointed by power of attorney in the case of an insurer or any other proper statutory authority in the case of a property or personal surety bail agent.

(D) "Insurer" means any domestic, foreign, or alien insurance company which has qualified to transact surety insurance business under this act and specifically in this state.

(E) "Commissioner" means the insurance commissioner or other statutory regulating authority.

(F) "Bail Agent" means a person, partnership or corporation licensed by and/or appointed by proper governmental or regulatory authority to execute or countersign surety bonds in connection with criminal judicial proceedings.

(G) "Recovery Agent" means a person compensated by a bail agent or surety in exchange for assisting the bail agent or surety in apprehending or surrendering any defendant, or keeping a defendant under necessary surveillance. This does not affect the right of bail agents or sureties to hire counsel or to ask assistance of law enforcement officers.

(H) "Disqualifying offense" means:

(1) A felony in this state; or

(2) A misdemeanor if an element of the misdemeanor or felony offense involves dishonesty, violence, a deadly weapon, the sale or possession for sale of a controlled substance, or any crime involving moral turpitude.

Section 3. Commissioner - Administration of Act

(A) The commissioner shall administer this Act through the department, which regulates recovery agents and sureties.

(B) The commissioner shall publish or cause to be published all rules, regulations, and requirements set and shall enforce them.

(C) The commissioner shall issue and revoke licenses pursuant to the provisions of this Act.

(D) The commissioner shall prescribe application forms for original and renewal licenses consistent with this Act.

(E) The commissioner shall administer all examinations determined necessary under this Act.

(F) The commissioner may employ the personnel necessary to implement this Act.

(G) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(H) The commissioner shall maintain a record of all his or her proceedings under this Act.

(I) The commissioner shall publish quarterly a directory of persons licensed under this Act. The commissioner may sell the directory on payment of a reasonable fee set by the commissioner. The fees collected under this subsection shall be appropriated to the department for use in the administration of this Act.

Section 4. Seal On Documents - Prima Facia Evidence

Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the commissioner, or any record of the commissioner authenticated under the hand of the commissioner by the seal of the commissioner's office shall be accepted by all

the courts of this state as prima facie evidence of the contents thereof.

Section 5. Certified Copy of Undertaking to Accompany Surrender - Release from Liability - Refund

(A) Any person desiring to make a surrender of the defendant shall be provided a certified copy of the undertakings and/or a certified copy of the arrest warrant, if any, forthwith by the clerk of the court having jurisdiction and shall deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken or to the official into whose custody the defendant would have been given if committed, who shall detain the defendant in the official's custody thereon as upon a commitment, and shall acknowledge the surrender in a written certificate.

Section 6. Arrest of Defendant

(A) For the purpose of surrendering the defendant, a surety may apprehend the defendant before or after the forfeiture of the undertaking without personal liability or may empower any recovery agent or law enforcement officer to make apprehension by providing written authority endorsed on a certified copy of the undertaking and paying the lawful fees therefor.

(B) Prior to attempting to apprehend or apprehending a principal on a bond, all bail or recovery agents, or sureties shall notify the office of the sheriff or city or state law enforcement agency having jurisdiction over the location in which such apprehension or attempted apprehension is to occur and/or where the principal is believed to be.

Section 7. Licensure and Registration

(A) A person, other than a bail agent, may not act in the capacity of a recovery agent or perform any of the functions, duties, or powers prescribed for recovery agents under this article unless the person is qualified and licensed as provided in this article.

(B) A license:

- (1) may not be issued except in compliance with this article; and
- (2) may only be issued to an individual.

(C) A firm, partnership, an association, a limited liability company, or a corporation may not be licensed.

(D) The applicant must apply in writing, on forms prepared and supplied by the

commissioner, and the commissioner may propound any reasonable interrogatories to an applicant for a license under this article or any renewal of a license relating to the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinions of the commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The commissioner may also conduct any reasonable inquiry or investigation that the commissioner sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(E) The failure of the applicant to secure approval of the commissioner shall not preclude the applicant from applying as many times as the applicant desires.

Section 8. Expiration of License - Reinstatement

(A) All licenses issued expire two (2) years after the month of issue based on the schedule set forth in subsection (b) unless the licensee's license was revoked or suspended before that date by the commissioner or upon notice served upon the commissioner that the insurer or employer of any recovery agent has canceled, terminated or revoked the licensee's authority to act for the insurer or employer.

(B) A license must be renewed under this article according to the following schedule:

(1) A license whose last name commences with the letters A through H shall renew a license before the last day of August every other calendar year beginning August 2000.

(2) A licensee whose last name commences with the letters I through R shall renew a license before the last day of September every other calendar year beginning September 2000.

(3) A licensee whose last name commences with the letters S through Z shall renew a license before the last day of October every other calendar year beginning October 2000.

(C) A licensee who is issued a new license with not more than one (1) year remaining shall pay fifty percent (50%) of the fee set forth in section 4 of this chapter.

(D) The Department shall notify each licensee in writing, at the address of the principal office of the licensee as shown on the books and records of the Department, of pending license expiration not later than 45 days prior to the expiration date.

(E) An expired license that was not suspended or revoked may be reinstated within two (2) years of expiration without examination provided all pre-license and continuing education requirements are met and that the licensee would otherwise qualify. Provided

that the request is accompanied by a reinstatement fee of 150 percent of the fee otherwise required.

Section 9. Recovery Agent - License Requirements

(A) In addition to the requirements prescribed in section 8 of this Act, an applicant for a license to serve as a recovery agent must affirmatively show that:

- (1) The applicant is at least twenty-one (21) years of age;
- (2) The applicant is a citizen of the United States and has been a bona fide resident of this state for more than one (1) year immediately preceding the date of application; and
- (3) The applicant has never been convicted of a disqualifying offense.
- (4) Has a high school diploma or a general equivalency diploma or has equivalent education as determined by the Commissioner.
- (5) Has submitted to the Commissioner a report of his or her criminal history from the central repository for _____ records of criminal history and any other state of residence in the five (5) years immediately preceding the application which indicate the applicant possesses the qualifications for and sufficient moral character to be licensed as a Recovery Agent.
- (6) Has submitted to the commissioner the results of an examination conducted by a psychiatrist or psychologist licensed to practice in this state which indicate that he does not suffer from a psychological condition that would adversely affect his ability to carry out his duties as a recovery agent (such as the Minnesota Multi Phase Personality Inventory Exam [MMPI]).
- (7) Has passed any written examination required by this Act.
- (8) Submits to the commissioner the results of a test to detect the presence of a controlled substance in his system that was administered no earlier than 30 days before the date of the application for the license which do not indicate the presence of any controlled substance for which he does not possess a current and lawful prescription issued in his name.
- (9) Successfully completes the training required by Section F of this Act.

(B) No person is entitled to receive, renew, or possess a license to operate in this state as a recovery agent that:

- (1) Has ever been convicted of a felony in this state; or
- (2) Has ever been convicted of a misdemeanor if an element of the misdemeanor or felony offense involves dishonesty, violence, a deadly weapon, the sale or possession for sale of a controlled substance or any crime involving moral

turpitude.

(C) No licensed recovery agent shall carry a firearm unless he obtains a special permit from the Commission of Public Safety in accordance with the provisions of subsection D of this section.

(D) The county sheriff having jurisdiction of the county of residence of a recovery agent licensed under this Act may grant a permit to carry a pistol, revolver or other firearm for personal protection provided such licensee has proved to the satisfaction of the sheriff that the licensee has successfully completed a course approved by the sheriff in the safety and use of firearms. The sheriff shall adopt and publish the regulatory requirements, number of hours, and content necessary to achieve the permit or shall publish an approved list of schools, institutions, or organizations offering such courses. All such permits shall require the final approval of the Commissioner.

(E) No person, except a licensed bail or recovery agent in possession of his or her current valid bail or recovery agents license, may perform any of the acts or duties of a recovery agent in this state unless properly licensed under this Act. Current valid bail and recovery agent licenses issued by other statutory entities shall be acceptable for the purposes of this section. A person who violates this section commits a _____ felony.

(F) An applicant must have successfully completed an eighty (80) hour classroom course of prelicensure instruction in bail bonds that is:

- (1) Offered by a state or national organization of bail agents or an accredited college or university that administers training programs for bail agents that is approved by the Commissioner and the Professional Bail Agents of the United States; and
- (2) Provides proof of bi-annual recertification consisting of eight classroom hours prior to renewal; or
- (3) Currently holds the Certified Bail Agent (CBA) or Master Certified Bail Agent (MCBA) designation granted by the Professional Bail Agents of the United States.

(G) The application must affirmatively show that the applicant has been a bona fide resident of the state for one (1) year immediately preceding the date of application. However, the commissioner may waive this requirement.

(H) The applicant must also provide the following:

- (1) The name under which the recovery business is to be conducted;
- (2) Copies of any assumed or professional name certificates pursuant to the Assumed Name or Professional Name Act; and
- (3) The geographical address of the principal office as well as all and any other

offices at which the applicant proposes to do business.

Section 10. Fees

(A) A license fee of Five hundred dollars (\$500.00) and an examination fee of One hundred dollars (\$100.00) shall be submitted to the Commissioner with each application for a recovery agent's license.

(B) An applicant for a recovery agent's license must also furnish with the application a complete set of the applicant's fingerprints and two recent credential-size full face photographs of the applicant. The applicant's fingerprints must be certified by an authorized law enforcement officer.

Section 11. Denial, Suspensions, Revocations or Refusal to Renew License - Grounds - Civil Penalty - Effect of Conviction

(A) The commissioner shall deny, suspend, revoke, or refuse to renew any license issued under this article for any of the following causes:

(1) Any causes for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(2) Violation of any laws of this state in the course of dealings under any license issued to the licensee by the commissioner.

(3) Material misstatement, misrepresentation, or fraud in the obtaining of the license.

(4) Misappropriation, conversion, or unlawful withholding of money belonging to insurers or others and received in the conduct of business under any license issued to the licensee by the commissioner.

(5) Fraudulent or dishonest practices in the conduct of business under any license issued to the licensee by the commissioner.

(6) Willful failure to comply with or willful violation of any proper order or rule of the commissioner.

(7) When, in the judgment of the commissioner, the licensee has, in the conduct of affairs under the license, demonstrated:

(a) incompetency or untrustworthiness;

(b) conduct or practices rendering the licensee unfit to carry on the recovery business or making the licensee's continuance in such business detrimental to the public interest; or

(c) that the licensee is no longer in good faith carrying on the recovery business.

and for such reasons is found by the commissioner to be a source of detriment, injury, or loss to the public.

(8) The listing of the name of the applicant or licensee on the most recent tax

warrant list supplied by the commissioner by the department of state revenue.

(B) The commissioner shall refuse to:

- (1) issue a license; or
- (2) renew a license issued;

under this Act to a person who is the subject of a proper order issued by a court wherein the person is in arrears on child support payments.

(C) The commissioner may also levy a civil penalty of not more than ten thousand dollars (\$10,000) for any of the causes listed in subsection (A). Any civil penalty levied under this subsection may be enforced in the same manner as a civil judgment.

(D) When a person who holds a license under this chapter enters a plea of guilty or nolo contendere to a disqualifying offense, the commissioner, immediately upon the court's acceptance of the plea, shall revoke the person's license. The commissioner shall revoke the license of any person who is convicted of a disqualifying offense immediately upon conviction. The pending of sentencing or the pending of an appeal of a conviction of a disqualifying offense does not stay the revocation of a license under this subsection.

Section 12. Revocation or Suspension - Procedures

(A) If, after investigation, the commissioner determines that a licensed recovery agent has been guilty of violating any of the laws of this state relating to bail bonds or has committed any disqualifying offense, the commissioner shall, upon ten (10) days notice in writing to:

- (1) the recovery agent; and
 - (2) the agent, agency, or insurer represented by the recovery agent, if any,
- accompanied by a copy of the charges of the unlawful conduct of the recovery agent, suspend the license of the recovery agent, unless on or before the expiration of the ten (10) days the recovery agent makes a written response to the commissioner concerning the charges.

(B) If, after the expiration of ten (10) days and within twenty (20) days after the expiration of the ten (10) days, the recovery agent fails to make a written response to the charges, the commissioner shall suspend or revoke the license of the recovery agent. If, however, the recovery agent files a written response denying the charges within the time specified, the commissioner may either dismiss the charges based upon the response or call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issue of facts made by the charges and answer.

(C) The commissioner shall give thirty (30) days notice to:

(1) the recovery agent; and

(2) the agent, agency, and insurer, if any, represented by the recovery agent, if any,

of the time and place of the hearing. The parties may produce witnesses and appear personally with or without representation by counsel.

(D) If, following the hearing, the commissioner determines by preponderance of the evidence that the recovery agent is guilty as alleged in the charges, whether or not convicted in a civil or criminal court, the commissioner shall:

(1) revoke the license of the recovery agent; or

(2) suspend the recovery agent for a definite period of time to be fixed in the order of suspension.

The commissioner may also levy a civil penalty against the recovery agent that is not more than ten thousand dollars (\$10,000).

Section 13. Appeal

(A) An applicant for license as a recovery agent whose:

(1) application has been denied; or

(2) license has been suspended, revoked, or denied renewal by the commissioner;

may appeal to the circuit court of the county from which the recovery agent applied for the license. The appeal shall be heard de novo.

Section 14. Terminations

(A) An agent, agency, or insurer that terminates the appointment of a recovery agent shall file written notice of the termination with the commissioner together with a copy of the notice given or mailed to the recovery agent. The notice filed with the commissioner must state the reasons, if any, for the termination. Information furnished to the commissioner is confidential and may not be used as evidence or a basis for any action against the agent, agency, or insurer or any of the agent's, agency's, or insurer's representatives.

(B) An agent, agency, or insurer may not appoint a recovery agent that has been terminated for cause or that owes a verifiable debt, relating to recovery, to another agent, agency, or insurer.

Section 15. Notice of Use of Recovery Agents

An insurer, agency, or licensed bail agent may use as a recovery agent any person who holds a valid recovery agent's license. A bail agent, agency, or insurer must, on or before

October 1 of each year, furnish to the commissioner, on a form supplied by the commissioner, a list of all recovery agents used by the bail agent, agency, or insurer during the preceding year.

Section 16. Registration of Recovery Agents' Licenses - Appointment

(A) A recovery agent may not perform the recovery agent's duties unless the recovery agent has registered the recovery agent's license within fifteen (15) days of issuance or any renewal in the office of the sheriff and with the clerk of the circuit court in the county where the recovery agent resides. The clerk of the circuit and the sheriff may not permit a registration unless the recovery agent is properly licensed by the commissioner under this Act.

Section 17. Prohibited Activities

(A) During a period of license suspension or revocation no person may acquire a financial interest in, be employed by, have an agency relationship with, or perform any services for a bail bond agency, licensee or insurer during the period of license suspension or revocation. No licensee under this article may accept any services from a person during the period of that person's license suspension or revocation.

- (1) The commissioner shall immediately suspend under Section 13 an agent, agency, or insurer who violates this section.
- (2) A person who knowingly or intentionally violates this section commits a Class _____ misdemeanor.

(B) A recovery agent may not:

- (1) Suggest or advise the employment of or name for employment any particular attorney to represent his principal.
- (2) Solicit business in or about any place where prisoners are confined or in or about any court.
- (3) Pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission or reduction of the amount of any undertaking or bail bond.
- (4) Wear, carry or display any uniform, badge, shield or other insignia or emblems that purport to indicate that such bail or recovery agent is an employee, officer or agent of any local, state or federal law enforcement agency unless approved by the commissioner.
- (5) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except for legal services actually rendered.
- (6) Accept a fee or rebate or accept anything of value from the principal or anyone in his behalf.

(7) Participate in the capacity of a bail agent or attorney at a trial or hearing of a person on any bond, except for the purposes of surrendering a defendant.

Section 18. Enforcement - Administration

(A) All fees and penalties collected by the commissioner under this Act shall be paid into a dedicated fund of the state treasury to be utilized for the enforcement and administration of this Act to be designated the recovery agent enforcement and administration fund. The fund shall be administered by the commissioner.

(B) The money in the fund created by this chapter shall be used for the following purposes and no other:

- (1) The employment of a qualified investigator and investigation staff.
- (2) The expense of examination.
- (3) Licensing
- (4) Forms
- (5) Other related expenses necessitated by this article.

(C) Any unexpected balance remaining in the fund at the end of the fiscal year shall not lapse but shall remain exclusively appropriated and available solely for the enforcement and administration of this article. Interest that accrues from these investments shall be inure to the benefit of the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

Section 19. Investigator - Staff

(A) The commissioner shall appoint a qualified investigator who shall serve at the pleasure of the commissioner. The investigator shall be of good moral character, have had at least five (5) years of experience as an insurance or private investigator or equivalent experience as a law enforcement or judicial officer, and be thoroughly familiar and conversant with _____ criminal law, including the court procedure and structure.

(B) The investigator, with the approval of the commissioner, may select such staff as is necessary to enable the investigator to properly perform the investigator's duties. The primary duty of the investigator and the investigator's staff is to administer this article and to investigate all violations of this Act and to report and recommend to the commissioner all findings made on the investigation.