

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1916

SPONSOR: Banking and Insurance Committee and Senator Silver

SUBJECT: Bail Bond Agencies and Agents

DATE: February 20, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.	Cellon	Cannon	CJ	Favorable
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises the laws regulating bail bond agents, based on recommendations of the Bail Bond Blue Ribbon Panel appointed by the Treasurer and Insurance Commissioner. Bail bond agents are regulated by the Department of Insurance, under chapter 648, F.S. A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

The bill makes the following changes:

- Prohibits any person owning a bail bond agency who is not a licensed and appointed bail bond agent.
- Requires the owner of a bail bond agency to designate a *primary bail bond agent* who is responsible for the overall operation and management of the agency.
- Authorizes the issuance of a temporary permit, valid for 24 months, if the owner of a bail bond agency dies or becomes mentally incapacitated.
- Increases the standards for education and qualifications for bail bond agents, including increasing the required pre-licensing course from 80 hours to 120 hours.
- Prohibits certain acts related to solicitation.
- Requires all build-up funds used to indemnify the insurer by the bail bond agent to be held in an individual fund trust account and maintained in an FDIC or FSLIC approved bank or savings and loan, subject to examination and accounting requirements.
- Requires a temporary bail bond agent to be accompanied by a supervising bail bond agent when apprehending defendants.
- Requires bail bond agents to file a sworn affidavit with a new appointing insurer that no funds are owed to another insurer.
- Provides more specific prohibitions against misleading advertising.

- Provides more specific prohibitions against bail bond agencies hiring persons convicted of a felony.
- Requires bail bond agents that surrender a defendant to provide the defendant with a statement of surrender.
- Provides additional accountability and penalties for requirements related to collateral held by a bail bond agent.
- Increases the maximum fee that a bail bond agent can charge for the actual expenses related to converting collateral to cash, from 10 percent to 20 percent of the face value of the bond, and allows the agent to charge a credit card fee.
- Increases administrative fines that may be imposed by the department for violations from \$500 to \$5,000 for a nonwillful violation, and from \$2,500 to \$20,000 for a willful violation.
- Authorizes the department to impose a “civil assessment” of up to \$5,000 against a licensee who fails to comply with solicitation requirements, subject to a preponderance of the evidence standard, rather than the clear and convincing standard that has been determined by the Florida Supreme Court to be required for agency fines.

This bill substantially amends the following sections of the Florida Statutes: 648.25, 648.27, 648.29, 648.30, 648.31, 648.34, 648.355, 648.36, 648.381, 648.382, 648.383, 648.384, 648.385, 648.386, 648.388, 648.39, 648.41, 648.44, 648.441, 648.442, 648.4425, 648.45, 648.52, 648.571, 624.501 and 624.523. The bill creates the following sections of the Florida Statutes: 648.24, 648.285, 648.387, and 648.525. The bill repeals s. 648.37, Florida Statutes.

II. Present Situation:

Bail bond agents are licensed and regulated by the Department of Insurance, pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

The current law provides requirements for licensure of bail bond agents; limits the amount of premium and expenses which can be charged; restricts the types of collateral which can be demanded and requires that such collateral be returned in a timely manner once the bond has been canceled; requires licensure as a temporary, one-year bail bond agent, with limited powers, as a pre-condition of obtaining a regular bail bond agent’s license; provides criminal penalties for certain acts such as acting in the capacity of a bail bond agent or bounty hunting without a license; prohibits solicitation; prohibits misleading or false advertisement or deceptive trade practices; requires bail bond agents to complete 14 hours of continuing education every two years; requires that certain statistical data be maintained and available to DOI. Many of these laws were added or revised in 1996, the last time that chapter 648, F.S., was substantially amended. Specific provisions of the current law affected by this bill are discussed in more detail below.

After the 2001 Regular Session, the Treasurer and Insurance Commissioner appointed a Blue Ribbon Panel to conduct a thorough review and analysis of the bail bond laws and to make recommendations for changes. The Treasurer appointed eleven members representing the bail

bond industry, two members representing the Department of Insurance, and three Ad Hoc members representing the criminal justice system and the clerks of the court. The Report of the Bail Bond Blue Ribbon Panel was issued in October 2001. The recommendations of the report are the basis for this bill. The report cites the significant rise in the number of investigations of bail bond agents being conducted by the department. During the past 3 fiscal years, 241 investigations required some form of disciplinary action, which involve 14.5 percent of the 1,668 bail bond licensees. In summary, the report made eleven recommendations:

1. Require a bail bond agency to be a permanent physical structure where all records are maintained and require the owner of a bail bond agency to be a licensed bail bond agent.
2. Make the owner of a bail bond agency and the designated primary agent responsible and accountable for the conduct and actions of the agency's employees.
3. Increase the standards for education and qualifications for bail bond agents.
4. Specify additional prohibitions and penalties for unlawful solicitation.
5. Require all build-up funds used to indemnify the insurer by the bail bond agent to be held in an individual fund trust account and maintained in an FDIC or FSLIC approved bank or savings and loan, subject to examination and accounting requirements.
6. Requires bail bond agents to file a sworn affidavit with a new appointing insurer that no funds are owed to another insurer.
7. Provide more specific prohibitions against misleading advertising.
8. Provide more specific prohibitions against bail bond agencies hiring persons convicted of a felony.
9. Require bail bond agents that surrender or recommit a defendant to provide the defendant with a statement of surrender.
10. Provide additional accountability and penalties for requirements related to collateral held by a bail bond agent.
11. Increase administrative penalties that may be imposed by the department.

III. Effect of Proposed Changes:

The bill addresses each of the areas listed above, in Present Situation that were recommended by the Bail Bond Blue Ribbon Panel. The specific changes are summarized below.

Section 1 creates s. 648.24, F.S., Declaration of Public Policy, to provide legislative intent that it is the public policy of this state that a bond for which fees or premiums are charged must be executed by a licensed bail bond agent in connection with the pretrial or appellate release of a criminal defendant and shall be construed as a commitment by the agent to ensure that the defendant appears at all subsequent criminal proceedings.

Section 2 amends s. 648.25, F.S., Definitions. The bill adds a definition of *bail bond agency*, (replacing a similar definition for *agency*) generally meaning the building where a licensee maintains an office and where records are maintained, or an entity that charges a fee to release a defendant from jail or engages in or employs others to engage in any activity that may be performed only by a licensed bail bond agent.

This section also defines *primary bail bond agent* as a licensed bail bond agent who is responsible for the overall operation and management of a bail bond agency and who hires and

supervises all individuals within that location. The definition prohibits a bail bond agent from being designated as a primary bail bond agent for more than one bail bond agency location.

The definition of *runner* is deleted. All references to runners are deleted by this bill. The licensure of new runners was repealed years ago, but references were maintained for the purpose of then-existing licensees. The department reports that there are no longer any active runner licenses.

The definition of *temporary bail bond agent* is amended to refer to a requirement that a temporary agent must be accompanied by a supervising bail bond agent while apprehending or arresting defendants. This conforms to s. 648.355, F.S., as amended by the bill.

Section 3 amends s. 648.27, F.S., Licenses and appointment; general.

The bill requires that a managing general agent licensed under this chapter must also be licensed as a bail bond agent. In the case of an entity that is licensed as a managing general agent, at least one owner, officer or director at each office location must be licensed as a bail bond agent.

Section 4 creates s. 648.285, F.S., Bond agency; ownership requirements.

The bill prohibits any person owning, controlling, or other having a pecuniary interest in a bail bond agency unless that individual is a licensed and appointed bail bond agent.

The bill also authorizes the issuance of a temporary permit, valid for 24 months, if the owner of a bail bond agency dies or becomes mentally incapacitated. In such case, a personal representative or legal guardian may be issued the temporary permit to manage the affairs of the bail bond agency. The applicant for the temporary permit must meet the qualifications for licensure as a bail bond agent, except for the residency, examination, education, and experience requirements.

Section 5 amends s. 648.29, F.S., Build-up funds posted by bail bond agent.

Current law specifies requirements for “build-up funds” posted by a bail bond agent, which are required by surety insurers. The bill clarifies that such funds are held by the insurer in a fiduciary capacity to indemnify an insurer for losses related to bail bonds executed by the agent. The bill requires that the funds be held in an individual trust account in a FDIC-approved or FSLIC-approved bank or savings and loan association in Florida. The bill deletes the current law that allows a managing general agent, rather than an insurer, to maintain the build-up trust account. The bill also clarifies that the funds are the sole property of the agent or agency and requires that the insurer provide copies of build-up fund account bank statements to their agents and agencies.

Section 6 amends s. 648.30, F.S., Licensure and appointment required.

The bill deletes references to “runners” and adds a reference to temporary bail bond agents in the section that prohibits a person from acting in the capacity of a bail bond agent or other specified licensee, unless appropriately licensed.

The current law prohibits a person, other than a law enforcement officer, from apprehending a principal on a bond unless that person is licensed as a bail bond agent in Florida or by the state where the bond was written. The bill adds a reference to a “bail bond enforcement agent” which is not a licensure category in Florida, but may be in another state, as a person authorized to assist a bail bond agent in apprehending defendants.

Section 7 amends s. 648.31, F.S., Appointment taxes and fees.

Deletes reference to “runners.”

Section 8 amends s. 648.34, F.S., Bail bond agents; qualifications.

The bill requires that an applicant for a license as a bail bond agent must hold a high school diploma or its equivalent and must be a United States citizen or legal alien.

Section 9 amends s. 648.355, F.S., Temporary limited license as limited surety agent or professional bail bond agent; pending examination.

The bill requires that an applicant for a license as a temporary bail bond agent (which is a prerequisite to obtaining a bail bond agent license) must hold a high school diploma or its equivalent and must be a United States citizen or legal alien. The bill also increases the required hours for completion of a certificate course in the criminal justice system from 80 to 120 hours and requires a passing grade of 80 or higher.

Current law requires an applicant to be employed by only one licensed supervising bail bond agent throughout the term of the temporary license. The bill adds that the applicant must be appointed by the same insurers as the supervising bail bond agent. It further requires that the supervising agent certify monthly to the department under oath the names and hours worked each week of all temporary bail bond agents. Filing a false certification is grounds for immediate suspension of the license and a \$5,000 fine.

The term of the temporary license is extended from 1 year to 18 months. Current law allows a person who has had a temporary license for at least 6 months, to apply for a regular bail bond license, which the bill increases to 12 months.

The bill restricts the current authority of a temporary licensee by requiring that he or she be accompanied by a supervising bail bond agent or an agent from the same agency when apprehending, arresting, or surrendering defendants to authorities.

Section 10 amends s. 648.36, F.S., Bail bond agent’s records.

Current law requires bail bond agents to maintain records in their office for 3 years of bail bonds executed or countersigned. Currently, the law states that such records must enable the “public” to obtain all necessary information concerning such bail bonds, which the bill changes to “department.” (Records held in an agent’s office are not public records under the Florida public records laws, unless the department takes or copies such records and maintains them.)

Section 11 amends s. 648.381, F.S., Reexamination.

Currently, an applicant for licensure must pass an examination prescribed by the department, but a person who fails the exam may re-take the exam as many times as he or she desires. The bill provides that a person who fails the exam three times must retake the 120-hour course and obtain a grade of 80 percent or higher before sitting for the exam again.

Section 12 amends s. 648.382, F.S., Appointment of bail bond agents and temporary bail bond agents; effective date of appointment.

The bill requires that prior to appointment by an insurer of a bail bond agent, the insurer (or the bail bond agent in the case of a temporary bail bond agent) must submit to the department an affidavit under oath signed by the appointee, stating that premiums are not owed to any insurer and that the appointee will discharge all outstanding forfeitures and judgments on bonds previously written. If the appointee does not satisfy such forfeitures or judgments, the former insurer must file a notice of such fact with supporting documents, under oath, with the appointing insurer, the former agent, and the department, stating that the insurer has satisfied the forfeiture from its own funds. Upon receipt of this notice, the appointing insurer must immediately cancel the licensee's appointment. The bill specifies criteria for reappointment and procedures for the appointing insurer or agent to file a petition with the department seeking relief.

Current law requires the appointing insurer or agent to advise the department in writing within 5 days after receiving notice that an appointee has been found guilty of a felony. The bill expands this requirement to include being arrested for, or pleading guilty or nolo contendere to a felony or other offense punishable by imprisonment of 1 year or more under the law of any jurisdiction, whether judgment was entered or withheld.

Section 13 amends s. 648.383, F.S., Renewal, continuation, reinstatement, and termination of appointment; bail bond agent and runners.

Deletes references to "runners."

Section 14 amends s. 648.384, F.S., Effect of expiration of appointment; bail bond agents.

Deletes references to "runners."

Section 15 amends s. 648.385, F.S., Continuing education required; application; exceptions; requirements; penalties.

Deletes outdated language.

Section 16 amends s. 648.386, F.S., Qualifications for prelicensing and continuing education schools and instructors.

Currently, the department approves schools that offer prelicensing and continuing education courses. The bill makes a conforming change to require that the school offer a 120-hour

classroom-instruction course, rather than an 80-hour course, which the bill requires all new applicants for a bail bond agent license to take. The bill also increases the required qualifications for instructors, requiring 10 years of experience, rather than 5 years, as a manager or officer of either a managing general agent for bail bonds or an insurance company underwriting bail in this state. (The alternative of being a licensed bail bond agent in Florida for at least 10 years is unchanged.)

Section 17 creates s. 648.387, F.S., Primary bail bond agent; duties.

The bill requires that the owner or operator of a bail bond agency designate a *primary bail bond agent* for each location. Failure to do so subjects the agency to possible suspension or revocation of the agency's license. This section is modeled on a similar requirement that currently applies to other insurance agencies (property, casualty, life, health) in s. 626.592, F.S. The primary bail bond agent is responsible for the overall operation and management of a bail bond agency location. A person may be designated as primary bail bond agent for only one location.

The bill authorizes the department to suspend or revoke the license of the owner, operator, and primary bail bond agent if an agency employs or uses the services of a person who has had a license denied or whose license is suspended or revoked, with certain narrow exceptions. Also, the owner, operator, or primary agent may not use the services of any person who has been charged with, found guilty of, or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more.

Section 18 amends s. 648.388, F.S., Insurer must appoint managing general agent.

The bill requires that upon appointment by an insurer of a managing general agent, the insurer must file with the department an affidavit under oath, executed by the appointee MGA, certifying that the appointee does not owe any unpaid premiums to any insurer and does not have any unpaid judgments or forfeitures in any state. The bill also requires that the MGA must maintain an office in Florida and maintain all records relating to bonds issued in Florida.

Section 19 amends s. 648.39, F.S., Termination of appointment of managing general agents, bail bond agents, and temporary bail bond agents.

Deletes references to "runners" and makes other technical changes.

Section 20 amends s. 648.41, F.S., Termination of appointment of temporary bail bond agents.

Deletes references to "runners."

Section 21 amends s. 648.44, F.S., Prohibitions; penalty.

The bill prohibits the following acts, the violation of which would be grounds for suspension or revocation of a license, or an administrative fine:

- Initiating in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family.

Any solicitation not prohibited by chapter 648 must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6), F.S. (These statutes require the caller to identify his or her name and business and certain other disclosures; and prohibit calls to numbers on the latest published “no sales solicitation calls” list. Section 501.616(6), F.S., makes it unlawful to make a commercial solicitation call before 8:00 a.m. or after 9:00 p.m.)

- Attempting to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72, F.S. (This section lists prohibited practices in collecting consumer debts, such as using or threatening force or violence; communicating with such frequency as constitutes harassment; using profane language, and other prohibited practices.)
- Conducting bail bond business with any person, other than the defendant, on the grounds of the jail or courthouse for the purpose of executing a bond.

Most of the acts currently prohibited in s. 648.44(1), F.S., are punishable as crimes as provided in subsection (9) and either classified as a third-degree felony or a first-degree misdemeanor. Each of the newly prohibited acts listed above would be classified as a first-degree misdemeanor. The criminal penalties for the currently prohibited acts would not be changed.

The bill additionally prohibits the following acts (but does not classify them as crimes):

- A bail bond agency using a name that implies a reduced rate of premium.
- Making material misrepresentations or omissions in statements or use advertisements that constitute material misrepresentations of facts, create unjust expectations concerning services, or make improper comparisons.
- Owning or advertising firm names that are false, misleading or deceptive, or using trade names that imply a connection with any government agency.
- Using any advertisement or name that includes the word “free.”
- Advertising under a trade name unless the name and address appears on the agent’s letterhead or business cards. Such name must be registered with the department.

Section 22 amends s. 648.441, F.S., Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.

The current law prohibits an insurer or bail bond agent from furnishing any forms or supplies used in soliciting or effecting bail bonds with a person who does not have a license to act as a bail bond agent and is appointed by the insurer, with certain exceptions. Currently any person who violates this section commits a misdemeanor of the first degree, which is punishable as provided in s. 775.082 or s. 775.083, F.S., which provides for imprisonment of up to 1 year and/or a fine of up to \$1,000. The bill provides an exception to this criminal penalty, by providing that the fine may not exceed \$5,000 in addition to any term of imprisonment.

Section 23 amends s. 648.442, F.S., Collateral security.

Current law specifies types of collateral that may be accepted by a bail bond agent. The bill requires that a copy of IRS Form 8300 be retained as part of the defendant's file if it is otherwise required. The bill prohibits a quit-claim deed for property to be taken as collateral.

The bill increases the maximum fee that a bail bond agent can charge for the actual and reasonable expenses related to converting collateral to cash. The maximum fee is increased from 10 percent to 20 percent of the face value of the bond.

Prior to appointment of a bail bond agent who is or was appointed by another insurer, the agent must file with the department a sworn and notarized affidavit stating that there has been no loss, misappropriation, conversion, or theft of any collateral held by the agent in trust for any such insurer; and that all collateral being held in trust and all records for any such insurer are available for immediate audit and inspection by the department, the insurer, or the managing general agent, and will be transmitted to the insurer upon demand of the department or insurer.

Section 24 amends s. 648.4425, F.S., Notice.

The bill requires that any bail bond agent that surrenders a defendant must provide the defendant with a signed statement of the reasons for surrender and the agent must maintain a copy of the statements in the defendant's file.

Section 25 amends s. 648.45, F.S., Actions against a licensee; suspension or revocation of eligibility to hold a license.

The bill adds the following grounds for denial, suspension, or revocation of a license, or an administrative fine:

- Signing and filing a report or record in the capacity of an agent which the licensee knows to be false or misleading;
- Willfully failing to file a report or records required by law;
- Willfully impeding or obstructing such filing or inducing another person to impede or obstruct such filing;
- Demonstrating a course of conduct or practices, which indicates that the licensee is incompetent, negligent, or dishonest or that property or rights of clients cannot safely be entrusted to him or her.

Section 26 amends s. 648.52, F.S., Administrative fine.

The bill increases the maximum administrative fines that may be imposed by the department against a licensee who violates any provision of the chapter or any of the other grounds listed for denial, suspension, or revocation of a license. The maximum fine is increased from \$500 to \$5,000 for a nonwillful violation, and increased from \$2,500 to \$20,000 for a willful violation. As under current law, this administrative fine may be in lieu of or in addition to suspension or revocation of a license. The current law (unchanged) also allows the department to increase the fine by an amount equal to any commissions or other pecuniary benefits received by the licensee in connection with any transaction related to the grounds for suspension or revocation.

By comparison, the maximum fine that the department may currently impose against an insurance agent is \$500 for a nonwillful violation, \$3,500 for a willful violation, but in the case of an insurance agency the maximum fine (for either willful or non-willful) is \$10,000. (s. 626.681, F.S.)

Section 27 creates s. 648.525, F.S., Civil assessment.

The bill creates a “civil assessment” of up to \$5,000 that the department may impose against a licensee who fails to comply with the solicitation requirements of this chapter. The bill states that the civil assessment is a civil remedy for conduct that harms the public and that is an unfair method of competition, and is *not* a penalty or administrative fine. The burden of proof in such proceedings is by a preponderance of the evidence. This evidentiary standard is lower than the “clear and convincing” standard that the Florida Supreme Court has determined that a state agency must meet to revoke or suspend a license or to impose an administrative fine (*Department of Banking and Finance v. Osborne Stern and Co*, 670 So.2d 932 (Fla. 1996)).

Section 28 amends s. 648.571, F.S., Failure to return collateral; penalty.

The current law requires a bail bond agent who has taken collateral to make a written request for a discharge of the bond to be delivered to the surety or insurer, upon demand. If the discharge is provided to the surety or agent, the collateral must be returned to the indemnitor within 21 days. The bill requires that a copy of the written request for discharge be given to the indemnitor or the person making the request for the collateral, and the agent must maintain a copy in his file.

The bill allows a bail bond agent to charge a credit card fee for payment of collateral if the fee is clearly shown on the collateral receipt and is acknowledged by the person tendering the credit card. A schedule of the fees must be conspicuously posted in the agency and a copy provided to the person tendering the credit card.

The bill adds a new penalty for any person violating this section of five times the dollar amount of the collateral.

Section 29 amends s. 624.501, F.S., related to license and appointment fees to delete a reference to “runner.”

Section 30 amends s. 624.523, F.S., related to the Insurance Commissioner’s Regulatory Trust Fund, to delete a reference to “runner” and to make a technical correction to a cross-reference.

Section 31 repeals s. 648.37, F.S., related to runners; qualifications.

Section 32 is a severability clause, if any provision of the act is held invalid.

Section 33 provides an effective date of July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 27 of the bill creates a “civil assessment” of \$5,000 that may be imposed by the department against a bail bond agent who fails to comply with the solicitation requirements of chapter 648, F.S. The department would have the burden by preponderance of the evidence in a civil administrative proceeding. This evidentiary standard is lower than the “clear and convincing” evidence standard determined by the Florida Supreme Court to be necessary for a state agency to impose administrative fines, as held in *Department of Banking and Finance v. Osborne Stern and Co*, 670 So.2d 932 (Fla. 1996).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional costs are likely to be imposed on applicants for a bail bond license due to the increase in the hours required for a prelicensing course.

Administrative fines are substantially increased by this bill and additional acts are prohibited.

The maximum fee that may be charged by a bail bond agent for converting collateral to cash is increased from 10 percent to 20 percent of the amount of the bond.

The overall improvement in industry practices expected under this bill should protect the public from abuses.

C. Government Sector Impact:

The Department of Insurance is required to adopt various forms that must be used by bail bond agents, but the department states that it has no fiscal impact.

VI. Technical Deficiencies:

None

VII. Related Issues:

None

VIII. Amendments:

None

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
