Chapter No. 4646
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HOUSE BILL NO. 900

Originated in House Don Richardson Clerk

HOUSE BILL NO. 900

AN ACT TO AMEND SECTIONS 83-39-1, 83-39-3 AND 83-39-15, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEFINITION OF PROFESSIONAL BAIL AGENT; TO PROHIBIT CERTAIN RELATIVES OF AGENTS FROM WRITING BONDS; TO REQUIRE CRIMINAL BACKGROUND CHECKS; TO PROVIDE FOR LICENSE REVOCATION FOR IMPERSONATING A BAIL AGENT; TO AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR FORFEITURE OF BAIL BONDS IN MUNICIPAL COURT; TO BRING FORWARD SECTIONS 83-39-27 AND 83-39-29, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 83-39-1, Mississippi Code of 1972, is amended as follows:

83-39-1. The following terms when used in this chapter shall have the following meanings:

(a) "Department" means the Department of Insurance.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Insurer" means any domestic or foreign insurance corporation or association engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state.

(d) "Professional bail agent" means any individual who shall furnish bail, acting as a licensed personal surety agent or as a licensed limited surety agent representing an insurer as defined by this chapter. The above definition shall not include, and this chapter does not apply to, any individual who is not licensed under this chapter who acts as personal surety in instances where there is no compensation charged or received for such service.

(e) "Soliciting bail agent" means any person who, as an agent or employee of a professional bail agent, or as an

independent contractor, for compensation or otherwise, shall solicit, advertise or actively seek bail bond business for or on behalf of a professional bail agent and who assists the professional bail agent in presenting the defendant in court when required or assists in the apprehension and surrender of the defendant to the court or keeps the defendant under necessary surveillance.

(f) "Bail enforcement agent" means a person who assists the professional bail agent in presenting the defendant in court when required, or who assists in the apprehension and surrender of the defendant to the court or who keeps the defendant under necessary surveillance. Nothing herein shall affect the right of professional bail agents to have counsel or to ask assistance of law enforcement officers.

(g) "Limited surety agent" means any individual who is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who is duly licensed by the commissioner to represent such insurer for the restricted lines of bail, fidelity and surety, after successfully completing a limited examination by the department for the restricted lines of business.

(h) "Personal surety agent" means any individual who, having posted the necessary qualification bond with the commissioner as required by Section 83-39-7, and duly licensed by the commissioner, may execute and sign bail bonds in connection with judicial proceedings. All new personal surety agents licensed after July 1, 1994, shall complete successfully a limited examination by the department for the restricted lines of business.

(i) "Surety" means the insurer or the personal surety agent guaranteeing the bail bond and for the purpose of process does not mean the agent of such insurer or personal surety agent.

(j) "Bail" means the use of money, property or other security to cause the release of a defendant from custody and secure the appearance of a defendant in criminal court proceedings, or the monitoring or supervision of defendants who are released from custody on recognizance, parole or probation, except when such monitoring or supervision is conducted after conviction, sentencing or other adjudication and solely by public employees.

SECTION 2. Section 83-39-3, Mississippi Code of 1972, is amended as follows:

83-39-3. (1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2) (a) No license shall be issued except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation, as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under the professional bail agent's name. No person who has ever been convicted of a felony or any crime involving moral turpitude, or who has not been a resident of this state for at least one (1) year, unless presently licensed for bail bonds, or who is under twenty-one (21) years of age, shall be issued a license hereunder.

No person engaged as a law enforcement or judicial official or attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are bailable, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.

(b) (i) No person who is a spouse of * * * a county or municipal law enforcement official, an employee of a county or municipal law enforcement official or * * * an employee of a law enforcement entity shall write a bond for a person arrested by the spouse or the law enforcement entity which the person's spouse serves as a law enforcement official or employee; violation of this prohibition shall result in license revocation.

(ii) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official or an employee, independent contractor or employee of any jail or corrections facility that houses state, county or municipal inmates who are bailable, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a parent, grandparent, child, sister, brother, or a consanguineous aunt or uncle. Violation of this prohibition shall result in license revocation.

(iii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.

(iv) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct

investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that agency.

(4) Each license issued hereunder shall expire biennially on the last day of September, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or in behalf of such insurer had been terminated, or upon notice served upon the commissioner by a professional bail agent that the employment of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent. Every license, except for temporary licenses, issued between June 1, 2007, and September 30, 2007, shall expire on September 30, 2009. Each license issued after September 30, 2007, shall expire on the last day of September of each odd-numbered year.

(5) The department shall prepare and deliver to each licensee a certificate showing the name, address and classification of such licensee, and shall certify that the person is a licensed professional bail agent, being either a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the certificate, if for a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The commissioner, after

a hearing under Section 83-39-17, may refuse to issue a license for a limited surety agent if he owes any premium or debt to an insurer to which he has been appointed.

(7) (a) Before the issuance of any professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) classroom hours of prelicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

(b) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8) (a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first year of an original license;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

SECTION 3. Section 83-39-15, Mississippi Code of 1972, is amended as follows:

83-39-15. (1) The department may deny, suspend, revoke or refuse to renew, as may be appropriate, a license to engage in the business of professional bail agent, soliciting bail agent, or bail enforcement agent for any of the following reasons:

(a) Any cause for which the issuance of the license would have been refused had it then existed and been known to the department.

(b) Failure to post a qualification bond in the required amount with the department during the period the person is engaged in the business within this state or, if the bond has been posted, the forfeiture or cancellation of the bond.

(c) Material misstatement misrepresentation or fraud in obtaining the license.

(d) Willful failure to comply with, or willful violation of, any provision of this chapter or of any proper order, rule or regulation of the department or any court of this state.

(e) Conviction of felony or crime involving moral turpitude.

(f) Default in payment to the court should any bond issued by such bail agent be forfeited by order of the court.

(g) Being elected or employed as a law enforcement or judicial official.

(h) Engaging in the practice of law.

(i) Writing a bond in violation of Section 83-39-3(2)(b)(i) and (ii).

(j) Giving legal advice or a legal opinion in any form.

(k) Acting as or impersonating a bail agent without a license.

(2) In addition to the grounds specified in subsection (1) of this section, the department shall be authorized to suspend the license, registration or permit of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license, registration or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 4. Section 21-23-8, Mississippi Code of 1972, is amended as follows:

21-23-8. (1) (a) The purpose of bail is to guarantee appearance and a bail bond shall not be forfeited for any other reason.

(b) If a defendant in any criminal case, proceeding or matter fails to appear for any proceeding as ordered by the municipal court, then the court shall order the bail forfeited and a judgment nisi and a bench warrant issued at the time of nonappearance. The clerk of the municipal court shall notify the surety of the forfeiture by writ of scire facias, with a copy of the judgment nisi and bench warrant attached thereto, within ten (10) working days of such order of judgment nisi either by personal service or by certified mail. Failure of the clerk to provide the required notice within ten (10) working days shall constitute prima facie evidence that the order should be set aside.

(c) The judgment nisi shall be returnable for ninety (90) days from the date of issuance. If during such period the defendant appears before the municipal court, or is arrested and surrendered, then the judgment nisi shall be set aside. If the surety produces the defendant or provides to the municipal court reasonable mitigating circumstances upon such showing, then the forfeiture shall not be made final. If the forfeiture is made final, a copy of the final judgment shall be served on the surety within ten (10) working days by either personal service or certified mail. Reasonable mitigating circumstances shall be that the defendant is incarcerated in another jurisdiction, that the defendant is hospitalized under a doctor's care, that the defendant is in a recognized drug rehabilitation program, that the defendant has been placed in a witness protection program and it shall be the duty of any such agency placing such defendant into a witness protection program to notify the municipal court and the

municipal court to notify the surety, or any other reason justifiable to the municipal court.

(2) If a final judgment is entered against a surety licensed by the Department of Insurance and has not been set aside after ninety (90) days, or later if such time is extended by the municipal court issuing the judgment nisi, then the municipal court shall order the department to revoke the authority of such surety to write bail bonds. The Commissioner of Insurance shall, upon notice of the municipal court, notify said surety within five (5) working days of receipt of revocation. If after ten (10) working days of such notification the revocation order has not been set aside by the municipal court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

(3) If within twelve (12) months of the date of the final forfeiture the defendant appears for municipal court, is arrested or surrendered to the municipal court, or if the defendant is found to be incarcerated in another jurisdiction and a hold order placed on the defendant, then the amount of bail, less reasonable extradition cost, excluding attorney fees, shall be refunded by the municipal court upon application by the surety.

SECTION 5. Section 83-39-27, Mississippi Code of 1972, is brought forward as follows:

83-39-27. It is unlawful for a licensee to engage in any of the following activities:

(a) Specify, suggest or advise the employment of any particular attorney to represent his principal.

(b) Pay a fee or rebate or give or promise to give anything of value to a jailer, policeman, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any of his employees or any person who has power to arrest or to hold any person in custody.

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any act on a bond, or as counsel to represent such bail agent, his agent or employees.

(d) Pay a fee or rebate or give or promise to give anything of value to the person on whose bond he is surety.

(e) Accept anything of value from a person on whose bond he is surety, or from others on behalf of such person, except the fee or premium on the bond, but the bail agent may accept collateral security or other indemnity.

(f) Coerce, suggest, aid and abet, offer promise of favor or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.

(g) Give legal advice or a legal opinion in any form.

SECTION 6. Section 83-39-29, Mississippi Code of 1972, is brought forward as follows:

83-39-29. (1) The department may provide information to the district attorney in the district in which a professional bail agent, a soliciting bail agent or bail enforcement agent is domiciled so that proper legal action may be pursued against any licensee who is alleged to have violated any provision of Chapter 39 of Title 83. Such licensee is guilty of a misdemeanor and shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both. Any insurer violating any provision of Chapter 39 of Title 83 may be fined in an amount not to exceed Fifty Thousand Dollars ($50,000.00).

(2) Any person who acts or attempts to solicit, write or present a bail bond as a professional bail agent, soliciting bail agent, or bail enforcement agent as defined in this chapter and who is not licensed under this chapter is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than

One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both.

(3) Any person who acts or attempts to act, represents himself to be, or impersonates a professional bail agent, a soliciting bail agent or a bail enforcement agent as defined in this chapter by attempting to arrest or detaining any person, and who is not licensed under this chapter, is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00), imprisonment for not more than one (1) year, or both.

(4) A bail agent, bail enforcement agent or bail enforcement agent from another state shall report to the sheriff's department of the county in which he is attempting to locate a fugitive prior to beginning to look for the fugitive to prove his licensing and legal right to the fugitive. Failure to prove licensing shall be an offense punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

(5) Any person charged with a criminal violation who has obtained his release from custody by having a professional bail agent, insurer, agent of a bail agent or insurer, or any person other than himself furnish his bail bond and who fails to appear in court, at the time and place ordered by the court, is guilty of "bond jumping" and, upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both, and payment of restitution for reasonable expenses incurred returning the defendant to court.

(6) Any person who knowingly and intentionally aids and abets any person in the commission of the offense of bond jumping, whether the person committing the principal offense is actually convicted, shall be guilty of aiding and abetting bond jumping and, upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county

jail for not more than one (1) year, or both, and payment of restitution for reasonable expenses incurred in returning the defendant to court. Any person who is convicted of aiding and abetting shall be jointly and severally liable for payment of restitution for reasonable expenses incurred in returning the defendant to court.

(7) Any bail agent who is prejudiced or injured by the commission of any of the offenses set forth in this section shall have standing to file a complaint alleging the commission of the offense or offenses.

SECTION 7. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 9, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 10, ~~2010~~

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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