

By: Senator(s) Kirby

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2146

1 AN ACT TO AMEND SECTION 83-39-7, MISSISSIPPI CODE OF 1972, TO
2 REVISE PROCEDURES CONCERNING THE REVOCATION OR SUSPENSION OF THE
3 LICENSE OF A PROFESSIONAL BAIL AGENT; TO AMEND SECTION 83-39-15,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE GROUNDS FOR THE DENIAL,
5 SUSPENSION, REVOCATION OR REFUSAL TO RENEW THE LICENSE OF A
6 PROFESSIONAL BAIL AGENT, SOLICITING BAIL AGENT OR BAIL ENFORCEMENT
7 AGENT; TO AMEND SECTION 83-39-3, MISSISSIPPI CODE OF 1972, TO
8 AUTHORIZE THE DEPARTMENT OF INSURANCE TO FORWARD A BAIL AGENT
9 APPLICANT'S FINGERPRINTS TO THE DEPARTMENT OF PUBLIC SAFETY AND
10 THE FEDERAL BUREAU OF INVESTIGATION FOR A CRIMINAL HISTORY CHECK;
11 TO AMEND SECTION 83-39-5, MISSISSIPPI CODE OF 1972, TO REQUIRE
12 CERTAIN INFORMATION TO BE PLACED ON THE APPLICATION FOR A BAIL
13 AGENT'S LICENSE; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 83-39-7, Mississippi Code of 1972, is
16 amended as follows:

17 83-39-7. (1) Each applicant for a professional bail agent
18 license who acts as personal surety shall be required to post a
19 qualification bond in the amount of Ten Thousand Dollars
20 (\$10,000.00) with the department. The qualification bond shall be
21 made by depositing with the commissioner the aforesaid amount of
22 bonds of the United States, State of Mississippi, or any agency or
23 subdivision thereof, or shall be written by an insurer as defined
24 in this chapter, shall meet the specifications as may be required
25 and defined in this chapter, and shall meet such specifications as
26 may be required and approved by the department. The bond shall be
27 conditioned upon the full and prompt payment of any bail bond
28 issued by such professional bail agent into the court ordering the
29 bond forfeited. The bond shall be to the people of the State of
30 Mississippi in favor of any court of this state, whether
31 municipal, justice, county, circuit, Supreme or other court.

32 (2) If any bail bond written by a professional bail agent is
33 declared forfeited and judgment entered thereon by a court of
34 proper jurisdiction as authorized in Section 99-5-25, and the
35 amount of the bond is not paid within ninety (90) days, that court
36 shall order the department to revoke the license of the
37 professional bail agent and, if the professional bail agent acts
38 as a personal surety, to declare the qualification bond * * * to
39 be forfeited * * *. If the bail bond is not forfeited correctly
40 under Section 99-5-25, the professional bail agent shall seek
41 timely judicial review of such forfeiture with the court of proper
42 jurisdiction.

43 (3) Upon notice from the court of proper jurisdiction of an
44 order of revocation, the department shall, after hearing held upon
45 not less than twenty (20) days' written notice, revoke the license
46 of the professional bail agent and, if the professional bail agent
47 acts as a personal surety, declare the qualification bond to be
48 forfeited. Any action by the department shall be stayed upon the
49 professional bail agent's obtaining judicial review in accordance
50 with subsection (2) of this section.

51 (4) The revocation or suspension of the license of the
52 professional bail agent shall also serve to revoke or suspend the
53 license of each soliciting bail agent and bail enforcement agent
54 employed or used by such professional bail agent.

55 (5) In the event of a final judgment of forfeiture of any
56 bail bond written under the provisions of this chapter, the amount
57 of money so forfeited by the final judgment of the proper court,
58 less all accrued court costs and excluding any interest charges or
59 attorney's fees, shall be refunded to the bail agent or his
60 insurance company upon proper showing to the court as to which is
61 entitled to same, provided the defendant in such cases is returned
62 to the sheriff of the county to which the original bail bond was
63 returnable within twelve (12) months of the date of such final
64 judgment, or proof made of incarceration of the defendant in

65 another jurisdiction, and that a "Hold Order" has been placed upon
66 the defendant for return of the defendant to the sheriff upon
67 release from the other jurisdiction, the return to the sheriff to
68 be the responsibility of the professional bail agent as provided
69 in subsection (6) of this section, then the bond forfeiture shall
70 be stayed and remission made upon petition to the court, in the
71 amount found in the court's discretion to be just and proper. A
72 bail agent licensed under this chapter shall have a right to apply
73 for and obtain from the proper court an extension of time delaying
74 a final judgment of forfeiture if such bail agent can
75 satisfactorily establish to the court wherein such forfeiture is
76 pending that the defendant named in the bail bond is lawfully in
77 custody outside of the State of Mississippi.

78 (6) The professional bail agent shall satisfy the
79 responsibility to return the defendant who has been held by a
80 "Hold Order" in another jurisdiction upon release from the other
81 jurisdiction:

82 (a) By personally returning the defendant to the
83 sheriff at no cost to the county; or

84 (b) Where the other jurisdiction will not release the
85 defendant to any person other than a law enforcement officer, by
86 reimbursing to the county the reasonable cost of the return of the
87 defendant, not to exceed the cost that would be entailed if the
88 option in paragraph (a) of this subsection were available.

89 **SECTION 2.** Section 83-39-15, Mississippi Code of 1972, is
90 amended as follows:

91 83-39-15. (1) The department may deny, suspend, revoke or
92 refuse to renew, as may be appropriate, the license of any person
93 engaged in the business of professional bail agent, soliciting
94 bail agent, or bail enforcement agent for any of the following
95 reasons:

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

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

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

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

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

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

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

115 (h) Engaging in the practice of law.

116 (i) Writing a bond for a person arrested by a spouse or
117 the law enforcement entity which a spouse serves as a law
118 enforcement official or employee.

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

120 (k) Using fraudulent, coercive or dishonest practices
121 of business in this state or elsewhere.

122 (2) In addition to the grounds specified in subsection (1)
123 of this section, the department shall be authorized to suspend the
124 license, registration or permit of any person for being out of
125 compliance with an order for support, as defined in Section
126 93-11-153. The procedure for suspension of a license,
127 registration or permit for being out of compliance with an order
128 for support, and the procedure for the reissuance or reinstatement

129 of a license, registration or permit suspended for that purpose,
130 and the payment of any fees for the reissuance or reinstatement of
131 a license, registration or permit suspended for that purpose,
132 shall be governed by Section 93-11-157 or 93-11-163, as the case
133 may be. If there is any conflict between any provision of Section
134 93-11-157 or 93-11-163 and any provision of this chapter, the
135 provisions of Section 93-11-157 or 93-11-163, as the case may be,
136 shall control.

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

139 83-39-3. (1) No person shall act in the capacity of
140 professional bail agent, soliciting bail agent or bail enforcement
141 agent, as defined in Section 83-39-1, or perform any of the
142 functions, duties or powers of the same unless that person shall
143 be qualified and licensed as provided in this chapter. The terms
144 of this chapter shall not apply to any automobile club or
145 association, financial institution, insurance company or other
146 organization or association or their employees who execute bail
147 bonds on violations arising out of the use of a motor vehicle by
148 their members, policyholders or borrowers when bail bond is not
149 the principal benefit of membership, the policy of insurance or of
150 a loan to such member, policyholder or borrower.

151 (2) (a) No license shall be issued except in compliance
152 with this chapter, and none shall be issued except to an
153 individual. No firm, partnership, association or corporation, as
154 such, shall be so licensed. No professional bail agent shall
155 operate under more than one (1) trade name. A soliciting bail
156 agent and bail enforcement agent shall operate only under the
157 professional bail agent's name. A soliciting bail agent shall be
158 employed by only one (1) professional bail agent. No person who
159 has ever been convicted of a felony or any crime involving moral
160 turpitude, or who has not been a resident of this state for at
161 least one (1) year, unless presently licensed for bail bonds, or

162 who is under twenty-one (21) years of age, shall be issued a
163 license hereunder. No person engaged as a law enforcement or
164 judicial official or attorney shall be licensed hereunder.

165 (b) (i) No person who is a spouse of: 1. a county or
166 municipal law enforcement official; 2. an employee of a county or
167 municipal law enforcement official; or 3. an employee of a law
168 enforcement entity shall write a bond for a person arrested by the
169 spouse or the law enforcement entity which the person's spouse
170 serves as a law enforcement official or employee; violation of
171 this prohibition shall result in license revocation.

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

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

178 (3) (a) The department is vested with the authority to
179 enforce this chapter. The department may conduct investigations
180 or request other state, county or local officials to conduct
181 investigations and promulgate such rules and regulations as may be
182 necessary for the enforcement of this chapter. The department may
183 establish monetary fines and collect such fines as necessary for
184 the enforcement of such rules and regulations. All fines
185 collected shall be deposited in the Special Insurance Department
186 Fund for the operation of that agency.

187 (b) In order to assist the department in determining an
188 applicant's suitability for a license under this chapter, the
189 department shall forward the fingerprints submitted with the
190 application to the Department of Public Safety for use by that
191 agency in conducting a criminal history check; if no disqualifying
192 record is identified at the state level, the fingerprints shall be
193 forwarded by the Department of Public Safety to the Federal Bureau
194 of Investigation for a national criminal history record check.

195 Fees related to the criminal history record check shall be paid by
196 the applicant to the commissioner and the monies from such fees
197 shall be deposited in the special fund in the State Treasury
198 designated as the "Insurance Department Fund."

199 (4) Each license issued hereunder shall expire annually on
200 the last day of May, unless revoked or suspended prior thereto by
201 the department, or upon notice served upon the commissioner by the
202 insurer that the authority of a limited surety agent to act for or
203 in behalf of such insurer had been terminated, or upon notice
204 served upon the commissioner by a professional bail agent that the
205 employment of a soliciting bail agent or bail enforcement agent
206 had been terminated by such professional bail agent.

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

216 (6) The commissioner, after a hearing under Section
217 83-39-17, may refuse to issue a privilege license for a soliciting
218 bail agent to change from one professional bail agent to another
219 if he owes any premium or debt to the professional bail agent with
220 whom he is currently licensed.

221 (7) From and after May 1, 2000, prior to the issuance of any
222 professional bail agent, soliciting bail agent or bail enforcement
223 agent license, the applicant shall submit proof of completion of
224 eight (8) hours of prelicensing education approved by the
225 department and the Professional Bail Agents Association of
226 Mississippi, Inc., and conducted by the Mississippi Judicial

227 College or any institution of higher learning or community college
228 located within the State of Mississippi.

229 (8) From and after May 1, 2000, prior to the renewal of any
230 professional bail agent, soliciting bail agent or bail enforcement
231 agent license, the applicant shall submit proof of completion of
232 eight (8) hours of continuing education approved by the department
233 and the Professional Bail Agents Association of Mississippi, Inc.,
234 and provided by the Mississippi Judicial College or any
235 institution of higher learning or community college located within
236 the State of Mississippi.

237 **SECTION 4.** Section 83-39-5, Mississippi Code of 1972, is
238 amended as follows:

239 83-39-5. Any person desiring to engage in the business of
240 professional bail agent, soliciting bail agent or bail enforcement
241 agent in this state shall apply to the department for a license on
242 forms prepared and furnished by the department. The application
243 for a license, or renewal thereof, shall set forth, under oath,
244 the following information:

245 (a) Full name, age, date of birth, social security
246 number, residence during the previous five (5) years, occupation
247 and business address for the previous five (5) years of the
248 applicant.

249 (b) Spouse's full name, occupation and business
250 address.

251 (c) A photograph of the applicant and a full set of
252 fingerprints.

253 (d) A statement that he is not licensed to practice law
254 in the State of Mississippi or any other state and that no
255 attorney or any convicted felon has any interest in his
256 application, either directly or indirectly.

257 (e) Any other information as may be required by this
258 chapter or by the department.

259 (f) In the case of a professional bail agent, a
260 statement that he will actively engage in the bail bond business.

261 (g) In the case of a soliciting bail agent, a statement
262 that he will be employed or used by only one (1) professional bail
263 agent and that the professional bail agent will supervise his work
264 and be responsible for his conduct in his work. A professional
265 bail agent shall sign the application of each soliciting bail
266 agent employed or used by him.

267 Each application or filing made under this section shall
268 include the social security number(s) of the applicant in
269 accordance with Section 93-11-64, Mississippi Code of 1972.

270 **SECTION 5.** This act shall take effect and be in force from
271 and after July 1, 2004.