

By: Senator(s) Kirby

To: Insurance

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 or demonstrating incompetence, untrustworthiness or financial
122 irresponsibility of business in this state or elsewhere.

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

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

138 (3) No person whose license has been revoked hereunder shall
139 be entitled to file another application for a license as a bail
140 agent within one (1) year from the effective date of such
141 revocation or, if judicial review of such revocation is sought,
142 within one (1) year from the date of final court order or decree
143 affirming such revocation. This subsection shall not apply to a
144 soliciting bail agent or bail enforcement agent whose license is
145 revoked due solely to the revocation of the professional bail
146 agent whom the soliciting bail agent or bail enforcement agent
147 operates under.

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

150 83-39-3. (1) No person shall act in the capacity of
151 professional bail agent, soliciting bail agent or bail enforcement
152 agent, as defined in Section 83-39-1, or perform any of the
153 functions, duties or powers of the same unless that person shall
154 be qualified and licensed as provided in this chapter. The terms
155 of this chapter shall not apply to any automobile club or
156 association, financial institution, insurance company or other
157 organization or association or their employees who execute bail
158 bonds on violations arising out of the use of a motor vehicle by
159 their members, policyholders or borrowers when bail bond is not
160 the principal benefit of membership, the policy of insurance or of
161 a loan to such member, policyholder or borrower.

162 (2) (a) No license shall be issued except in compliance
163 with this chapter, and none shall be issued except to an
164 individual. No firm, partnership, association or corporation, as
165 such, shall be so licensed. No professional bail agent shall
166 operate under more than one (1) trade name. A soliciting bail
167 agent and bail enforcement agent shall operate only under the
168 professional bail agent's name. A soliciting bail agent shall be
169 employed by only one (1) professional bail agent. No person who
170 has ever been convicted of a felony or any crime involving moral
171 turpitude, or who has not been a resident of this state for at
172 least one (1) year, unless presently licensed for bail bonds, or
173 who is under twenty-one (21) years of age, shall be issued a
174 license hereunder. No person engaged as a law enforcement or
175 judicial official or attorney shall be licensed hereunder.

176 (b) (i) No person who is a spouse of: 1. a county or
177 municipal law enforcement official; 2. an employee of a county or
178 municipal law enforcement official; or 3. an employee of a law
179 enforcement entity shall write a bond for a person arrested by the
180 spouse or the law enforcement entity which the person's spouse
181 serves as a law enforcement official or employee; violation of
182 this prohibition shall result in license revocation.

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

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

189 (3) (a) The department is vested with the authority to
190 enforce this chapter. The department may conduct investigations
191 or request other state, county or local officials to conduct
192 investigations and promulgate such rules and regulations as may be
193 necessary for the enforcement of this chapter. The department may
194 establish monetary fines and collect such fines as necessary for

195 the enforcement of such rules and regulations. All fines
196 collected shall be deposited in the Special Insurance Department
197 Fund for the operation of that agency.

198 (b) In order to assist the department in determining an
199 applicant's suitability for a license under this chapter, the
200 department shall forward the fingerprints submitted with the
201 application to the Department of Public Safety for use by that
202 agency in conducting a criminal history check; if no disqualifying
203 record is identified at the state level, the fingerprints shall be
204 forwarded by the Department of Public Safety to the Federal Bureau
205 of Investigation for a national criminal history record check.
206 Fees related to the criminal history record check shall be paid by
207 the applicant to the commissioner and the monies from such fees
208 shall be deposited in the special fund in the State Treasury
209 designated as the "Insurance Department Fund."

210 (4) Each license issued hereunder shall expire annually on
211 the last day of May, unless revoked or suspended prior thereto by
212 the department, or upon notice served upon the commissioner by the
213 insurer that the authority of a limited surety agent to act for or
214 in behalf of such insurer had been terminated, or upon notice
215 served upon the commissioner by a professional bail agent that the
216 employment of a soliciting bail agent or bail enforcement agent
217 had been terminated by such professional bail agent.

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

227 (6) The commissioner, after a hearing under Section
228 83-39-17, may refuse to issue a privilege license for a soliciting
229 bail agent to change from one professional bail agent to another
230 if he owes any premium or debt to the professional bail agent with
231 whom he is currently licensed.

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

240 (8) From and after May 1, 2000, prior to the renewal of any
241 professional bail agent, soliciting bail agent or bail enforcement
242 agent license, the applicant shall submit proof of completion of
243 eight (8) hours of continuing education approved by the department
244 and the Professional Bail Agents Association of Mississippi, Inc.,
245 and provided by the Mississippi Judicial College or any
246 institution of higher learning or community college located within
247 the State of Mississippi.

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

250 83-39-5. Any person desiring to engage in the business of
251 professional bail agent, soliciting bail agent or bail enforcement
252 agent in this state shall apply to the department for a license on
253 forms prepared and furnished by the department. The application
254 for a license, or renewal thereof, shall set forth, under oath,
255 the following information:

256 (a) Full name, age, date of birth, social security
257 number, residence during the previous five (5) years, occupation
258 and business address for the previous five (5) years of the
259 applicant.

260 (b) Spouse's full name, occupation and business
261 address.
262 (c) A photograph of the applicant and a full set of
263 fingerprints.
264 (d) A statement that he is not licensed to practice law
265 in the State of Mississippi or any other state and that no
266 attorney or any convicted felon has any interest in his
267 application, either directly or indirectly.
268 (e) Any other information as may be required by this
269 chapter or by the department.
270 (f) In the case of a professional bail agent, a
271 statement that he will actively engage in the bail bond business.
272 (g) In the case of a soliciting bail agent, a statement
273 that he will be employed or used by only one (1) professional bail
274 agent and that the professional bail agent will supervise his work
275 and be responsible for his conduct in his work. A professional
276 bail agent shall sign the application of each soliciting bail
277 agent employed or used by him.
278 Each application or filing made under this section shall
279 include the social security number(s) of the applicant in
280 accordance with Section 93-11-64, Mississippi Code of 1972.
281 **SECTION 5.** This act shall take effect and be in force from
282 and after July 1, 2004.