

By: Representative Rogers (61st)

To: Judiciary B

HOUSE BILL NO. 1485
(As Passed the House)

1 AN ACT TO CREATE SECTION 83-39-8, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE TRANSFER OF A QUALIFICATION BOND OF A PERSONAL
3 SURETY AGENT; TO AMEND SECTION 83-39-25, MISSISSIPPI CODE OF 1972,
4 TO ALLOW BAIL AGENTS TO HOLD COLLATERAL FOR BONDS; TO AMEND
5 SECTION 83-39-3, MISSISSIPPI CODE OF 1972, TO REVISE THE
6 INDIVIDUAL LICENSE REQUIREMENTS; TO SPECIFY WHEN LICENSES SHALL
7 EXPIRE; TO AMEND SECTION 83-39-5, MISSISSIPPI CODE OF 1972, TO
8 REVISE LICENSE PHOTOGRAPH AND FINGERPRINT REQUIREMENTS; TO AMEND
9 SECTION 83-39-7, MISSISSIPPI CODE OF 1972, TO REVISE THE
10 QUALIFICATION BOND; TO AMEND SECTION 83-39-11, MISSISSIPPI CODE OF
11 1972, TO REVISE THE LICENSE FEES; TO CLARIFY THE WRITING OF BONDS;
12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** The following shall be codified as Section
15 83-39-8, Mississippi Code of 1972.

16 83-39-8. A personal surety agent licensed under this chapter
17 or the executor, trustee or guardian of his estate shall be
18 allowed to transfer the qualification bond required under Section
19 83-39-7 to another person, provided that person meets all
20 requirements for a license under this chapter and assumes all
21 outstanding liabilities of the personal surety agent. The
22 transferee shall be authorized to conduct the business of the
23 personal surety agent existing and pending at the time of the
24 transferee. The transferee shall submit an application with the
25 fee and proof of education required by Section 83-39-5, which
26 application shall be processed expeditiously and with priority by
27 the department.

28 **SECTION 2.** Section 83-39-25, Mississippi Code of 1972, is
29 amended as follows:

30 83-39-25. (1) A professional bail agent or his agent shall
31 charge and collect for his premium, commission, or fee an amount
32 of ten percent (10%) of the amount of bail per bond posted by him,

33 or Fifty Dollars (\$50.00), whichever is greater, except on a bond
34 on a defendant who is charged with a capital offense, or on a
35 defendant who resides outside the State of Mississippi, in which
36 case the premium, commission or fee shall be fifteen percent (15%)
37 of the amount of bail, per bond posted by him, or Fifty Dollars
38 (\$50.00), whichever is greater.

39 (2) A professional bail agent or his agent shall be allowed
40 under this chapter to charge to the defendant no more than Fifty
41 Dollars (\$50.00) for expenses resulting from a bond of One
42 Thousand Dollars (\$1,000.00) or less when such bail agent is
43 required to travel outside the county in which he does business.

44 (3) A professional bail agent or his agent shall also charge
45 an additional Twenty-five Dollars (\$25.00) processing fee on each
46 bond issued by him.

47 (4) Nothing herein shall prohibit a professional bail agent
48 or his agent from holding collateral or taking a security interest
49 in collateral for the purpose of insuring the payment of the
50 premium of the bond posted or indemnifying the professional bail
51 agent for losses incurred due to a forfeiture of a bond or the
52 costs of apprehension and surrender of the principal.

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

55 83-39-3. (1) No person shall act in the capacity of
56 professional bail agent, soliciting bail agent or bail enforcement
57 agent, as defined in Section 83-39-1, or perform any of the
58 functions, duties or powers of the same unless that person shall
59 be qualified and licensed as provided in this chapter. The terms
60 of this chapter shall not apply to any automobile club or
61 association, financial institution, insurance company or other
62 organization or association or their employees who execute bail
63 bonds on violations arising out of the use of a motor vehicle by
64 their members, policyholders or borrowers when bail bond is not

65 the principal benefit of membership, the policy of insurance or of
66 a loan to such member, policyholder or borrower.

67 (2) (a) No license shall be issued except in compliance
68 with this chapter, and none shall be issued except to an
69 individual. No firm, partnership, association or corporation, as
70 such, shall be so licensed. No professional bail agent shall
71 operate under more than one (1) trade name. A soliciting bail
72 agent and bail enforcement agent shall operate only under the
73 professional bail agent's name. No person who has ever been
74 convicted of a felony or any crime involving moral turpitude, or
75 who has not been a resident of this state for at least one (1)
76 year, unless presently licensed for bail bonds, or who is under
77 twenty-one (21) years of age, shall be issued a license hereunder.
78 No person engaged as a law enforcement or judicial official or
79 attorney shall be licensed hereunder. A person who is employed in
80 any capacity at any jail or corrections facility that houses
81 state, county or municipal inmates who are bailable, whether the
82 person is a public employee, independent contractor, or the
83 employee of an independent contractor, may not be licensed under
84 this section.

85 (b) (i) No person who is a spouse of: 1. a county or
86 municipal law enforcement official; 2. an employee of a county or
87 municipal law enforcement official; or 3. an employee of a law
88 enforcement entity shall write a bond for a person arrested by the
89 spouse or the law enforcement entity which the person's spouse
90 serves as a law enforcement official or employee; violation of
91 this prohibition shall result in license revocation.

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

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

98 (3) The department is vested with the authority to enforce
99 this chapter. The department may conduct investigations or
100 request other state, county or local officials to conduct
101 investigations and promulgate such rules and regulations as may be
102 necessary for the enforcement of this chapter. The department may
103 establish monetary fines and collect such fines as necessary for
104 the enforcement of such rules and regulations. All fines
105 collected shall be deposited in the Special Insurance Department
106 Fund for the operation of that agency.

107 (4) Each license issued hereunder shall expire biennially on
108 the last day of September, unless revoked or suspended prior
109 thereto by the department, or upon notice served upon the
110 commissioner by the insurer that the authority of a limited surety
111 agent to act for or in behalf of such insurer had been terminated,
112 or upon notice served upon the commissioner by a professional bail
113 agent that the employment of a soliciting bail agent or bail
114 enforcement agent had been terminated by such professional bail
115 agent. Every license, except for temporary licenses, issued
116 between June 1, 2007, and September 30, 2007, shall expire on
117 September 30, 2009. Each license issued after September 30, 2007,
118 shall expire biennially on the last day of September.

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

128 (6) The commissioner, after a hearing under Section
129 83-39-17, may refuse to issue a privilege license for a soliciting
130 bail agent to change from one professional bail agent to another

131 if he owes any premium or debt to the professional bail agent with
132 whom he is currently licensed. The commissioner, after a hearing
133 under Section 83-39-17, may refuse to issue a license for a
134 limited surety agent if he owes any premium or debt to an insurer
135 to which he has been appointed.

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

145 (8) Before the renewal of any professional bail agent,
146 soliciting bail agent or bail enforcement agent license, the
147 applicant shall submit proof of successful completion of eight (8)
148 classroom hours of continuing education approved by * * * the
149 Professional Bail Agents Association of Mississippi, Inc., and
150 provided by persons or entities approved by the Professional Bail
151 Agents Association of Mississippi, Inc. The hours required by
152 this subsection shall be classroom hours and may not be acquired
153 through correspondence or over the Internet.

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

156 83-39-5. Any person desiring to engage in the business of
157 professional bail agent, soliciting bail agent, or bail
158 enforcement agent in this state shall apply to the department for
159 a license on forms prepared and furnished by the department. The
160 application for a license, or renewal thereof, shall set forth,
161 under oath, the following information:

162 (a) Full name, age, date of birth, social security
163 number, residence during the previous five (5) years, occupation
164 and business address of the applicant.

165 (b) Spouse's full name, occupation and business
166 address.

167 (c) A photograph of the applicant and a full set of
168 fingerprints for the initial application and, thereafter, as
169 requested by the department.

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

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

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

178 (g) In the case of a soliciting bail agent, a statement
179 that he will be employed or used by only one (1) professional bail
180 agent and that the professional bail agent will supervise his work
181 and be responsible for his conduct in his work. A professional
182 bail agent shall sign the application of each soliciting bail
183 agent employed or used by him.

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

187 **SECTION 5.** Section 83-39-7, Mississippi Code of 1972, is
188 amended as follows:

189 83-39-7. (1) Each applicant for a professional bail agent
190 license who acts as personal surety shall be required to post a
191 qualification bond in the amount of * * * Thirty Thousand Dollars
192 (\$30,000.00) for each county in which the professional bail agent
193 conducts business. The qualification bond shall be made by
194 depositing with the commissioner the aforesaid amount of bonds of

195 the United States, the State of Mississippi or any agency or
196 subdivision thereof, or a certificate of deposit issued by an
197 institution whose deposits are insured by the Federal Deposit
198 Insurance Corporation and made payable jointly to the owner and
199 the Department of Insurance, or shall be written by an insurer as
200 defined in this chapter, shall meet the specifications as may be
201 required and defined in this chapter, and shall meet such
202 specifications as may be required and approved by the department.
203 The bond shall be conditioned upon the full and prompt payment of
204 any bail bond issued by such professional bail agent into the
205 court ordering the bond forfeited. The bond shall be to the
206 people of the State of Mississippi in favor of any court of this
207 state, whether municipal, justice, county, circuit, Supreme or
208 other court. If any bond issued by a professional bail agent is
209 declared forfeited and judgment entered thereon by a court of
210 proper jurisdiction as authorized in Section 99-5-25, and the
211 amount of the bond is not paid within ninety (90) days, that court
212 shall order the department to declare the qualification bond of
213 the professional bail agent to be forfeited and the license
214 revoked. If the bond was not forfeited correctly under Section
215 99-5-25, it shall be returned to the court as uncollectible. The
216 department shall then order the surety on the qualification bond
217 to deposit with the court an amount equal to the amount of the
218 bond issued by the professional bail agent and declared forfeited
219 by the court, or the amount of the qualification bond, whichever
220 is the smaller amount. The department shall, after hearing held
221 upon not less than ten (10) days' written notice, suspend the
222 license of the professional bail agent until such time as another
223 qualification bond in the required amount is posted with the
224 department. The revocation of the license of the professional
225 bail agent shall also serve to revoke the license of each
226 soliciting bail agent and bail enforcement agent employed or used
227 by such professional bail agent. In the event of a final judgment

228 of forfeiture of any bail bond written under the provisions of
229 this chapter, the amount of money so forfeited by the final
230 judgment of the proper court, less all accrued court costs and
231 excluding any interest charges or attorney's fees, shall be
232 refunded to the bail agent or his insurance company upon proper
233 showing to the court as to which is entitled to same, provided the
234 defendant in such cases is returned to the sheriff of the county
235 to which the original bail bond was returnable within twelve (12)
236 months of the date of such final judgment, or proof made of
237 incarceration of the defendant in another jurisdiction, and that a
238 "Hold Order" has been placed upon the defendant for return of the
239 defendant to the sheriff upon release from the other jurisdiction,
240 the return to the sheriff to be the responsibility of the
241 professional bail agent as provided in subsection (2) of this
242 section, then the bond forfeiture shall be stayed and remission
243 made upon petition to the court, in the amount found in the
244 court's discretion to be just and proper. A bail agent licensed
245 under this chapter shall have a right to apply for and obtain from
246 the proper court an extension of time delaying a final judgment of
247 forfeiture if such bail agent can satisfactorily establish to the
248 court wherein such forfeiture is pending that the defendant named
249 in the bail bond is lawfully in custody outside of the State of
250 Mississippi.

251 (2) The professional bail agent shall satisfy the
252 responsibility to return the defendant who has been held by a
253 "Hold Order" in another jurisdiction upon release from the other
254 jurisdiction:

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

257 (b) Where the other jurisdiction will not release the
258 defendant to any person other than a law enforcement officer, by
259 reimbursing to the county the reasonable cost of the return of the

260 defendant, not to exceed the cost that would be entailed if the
261 option in paragraph (a) of this subsection were available.

262 (3) A professional bail agent may employ up to ten (10)
263 agents and each agent shall disclose to the department the number
264 of bonds that such agent writes in a year.

265 **SECTION 6.** Section 83-39-11, Mississippi Code of 1972, is
266 amended as follows:

267 83-39-11. Each license application and application for
268 license renewal to engage in the business of professional bail
269 agent shall be accompanied by a fee of One Hundred Dollars
270 (\$100.00). Each license application and application for license
271 renewal to engage in the business of soliciting bail agent or bail
272 enforcement agent shall be accompanied by a fee of Forty Dollars
273 (\$40.00).

274 **SECTION 7.** (1) A limited surety may write bonds anywhere in
275 the state provided that such limited surety has an audited annual
276 financial statement and a qualified power of attorney indicating
277 the amount that such limited surety is qualified to write. A
278 personal surety shall only be allowed to write bonds for the types
279 of surety for which they are licensed.

280 (2) Bonds written through a personal surety shall only cover
281 one (1) individual bondsman.

282 (3) All bonds must be written for at least ten percent (10%)
283 of the total value of the bond. Any bond written for less than
284 ten percent (10%) shall be grounds for license revocation and
285 shall be a misdemeanor punishable by a fine of Five Thousand
286 Dollars (\$5,000.00) and imprisonment up to one (1) year in the
287 county jail.

288 (4) A bondsman who forfeits a bond shall be prohibited from
289 writing bonds in the state and shall have his or her license
290 revoked until the forfeited bond is paid. If a bondsman has more
291 than three (3) forfeitures in a year and the forfeitures are not

292 paid within ninety (90) days, such bondsman shall be subject to a
293 permanent license revocation.

294 **SECTION 8.** This act shall take effect and be in force from
295 and after June 1, 2007.