

By: Representative Rogers (61st)

To: Judiciary B

HOUSE BILL NO. 1485
(As Sent to Governor)

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; AND FOR RELATED PURPOSES.

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

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

15 83-39-8. A personal surety agent licensed under this chapter
16 or the executor, trustee or guardian of his estate shall be
17 allowed to transfer the qualification bond required under Section
18 83-39-7 to another person, provided that person meets all
19 requirements for a license under this chapter and assumes all
20 outstanding liabilities of the personal surety agent. The
21 transferee shall be authorized to conduct the business of the
22 personal surety agent existing and pending at the time of the
23 transferee. The transferee shall submit an application with the
24 fee and proof of education required by Section 83-39-5, which
25 application shall be processed expeditiously and with priority by
26 the department.

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

29 83-39-25. (1) A professional bail agent or his agent shall
30 charge and collect for his premium, commission, or fee an amount
31 of ten percent (10%) of the amount of bail per bond posted by him,

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

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

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

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

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

54 83-39-3. (1) No person shall act in the capacity of
55 professional bail agent, soliciting bail agent or bail enforcement
56 agent, as defined in Section 83-39-1, or perform any of the
57 functions, duties or powers of the same unless that person shall
58 be qualified and licensed as provided in this chapter. The terms
59 of this chapter shall not apply to any automobile club or
60 association, financial institution, insurance company or other
61 organization or association or their employees who execute bail
62 bonds on violations arising out of the use of a motor vehicle by
63 their members, policyholders or borrowers when bail bond is not

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

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

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

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

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

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

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

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

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

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

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

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

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

155 83-39-5. Any person desiring to engage in the business of
156 professional bail agent, soliciting bail agent, or bail
157 enforcement agent in this state shall apply to the department for
158 a license on forms prepared and furnished by the department. The
159 application for a license, or renewal thereof, shall set forth,
160 under oath, the following information:

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

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

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

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

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

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

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

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

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

188 83-39-7. (1) Each applicant for a professional bail agent
189 license who acts as personal surety shall be required to post a
190 qualification bond in the amount of * * * Thirty Thousand Dollars
191 (\$30,000.00). The qualification bond shall be made by depositing
192 with the commissioner the aforesaid amount of bonds of the United
193 States, the State of Mississippi or any agency or subdivision

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

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

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

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

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

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

262 83-39-11. Each license application and application for
263 license renewal to engage in the business of professional bail
264 agent shall be accompanied by a fee of One Hundred Dollars
265 (\$100.00). Each license application and application for license
266 renewal to engage in the business of soliciting bail agent or bail
267 enforcement agent shall be accompanied by a fee of Forty Dollars
268 (\$40.00).

269 **SECTION 7.** This act shall take effect and be in force from
270 and after June 1, 2007.