

By: Representatives Compretta, Rogers (61st) To: Judiciary B

HOUSE BILL NO. 900
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 83-39-1, 83-39-3 AND 83-39-15,
2 MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEFINITION OF
3 PROFESSIONAL BAIL AGENT; TO PROHIBIT CERTAIN RELATIVES OF AGENTS
4 FROM WRITING BONDS; TO REQUIRE CRIMINAL BACKGROUND CHECKS; TO
5 PROVIDE FOR LICENSE REVOCATION FOR IMPERSONATING A BAIL AGENT; TO
6 AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 PROCEDURE FOR FORFEITURE OF BAIL BONDS IN MUNICIPAL COURT; TO
8 BRING FORWARD SECTIONS 83-39-27 AND 83-39-29, MISSISSIPPI CODE OF
9 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

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

13 83-39-1. The following terms when used in this chapter shall
14 have the following meanings:

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

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

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

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

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



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

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

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

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

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



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

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

73 83-39-3. (1) No person shall act in the capacity of
74 professional bail agent, soliciting bail agent or bail enforcement
75 agent, as defined in Section 83-39-1, or perform any of the
76 functions, duties or powers of the same unless that person shall
77 be qualified and licensed as provided in this chapter. The terms
78 of this chapter shall not apply to any automobile club or
79 association, financial institution, insurance company or other
80 organization or association or their employees who execute bail
81 bonds on violations arising out of the use of a motor vehicle by
82 their members, policyholders or borrowers when bail bond is not
83 the principal benefit of membership, the policy of insurance or of
84 a loan to such member, policyholder or borrower.

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



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

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

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

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

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

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



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

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

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

157 (6) The commissioner, after a hearing under Section
158 83-39-17, may refuse to issue a privilege license for a soliciting
159 bail agent to change from one (1) professional bail agent to
160 another if he owes any premium or debt to the professional bail
161 agent with whom he is currently licensed. The commissioner, after



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

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

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

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

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



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

198 (b) If an applicant for renewal failed to obtain the
199 required eight (8) hours for each year of the license period
200 during the actual license year in which the education was required
201 to be obtained, the applicant shall not be eligible for a renewal
202 license but shall be required to obtain an original license and be
203 subject to the education requirements set forth in subsection (7).
204 The commissioner shall not be required to comply with Section
205 83-39-17 in denying an application for a renewal license under
206 this paragraph (b).

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

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

216 83-39-15. (1) The department may deny, suspend, revoke or
217 refuse to renew, as may be appropriate, a license to engage in the
218 business of professional bail agent, soliciting bail agent, or
219 bail enforcement agent for any of the following reasons:

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

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



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

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

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

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

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

239 (h) Engaging in the practice of law.

240 (i) Writing a bond in violation of Section
241 83-39-3(2)(b)(i) and (ii).

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

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

245 (2) In addition to the grounds specified in subsection (1)
246 of this section, the department shall be authorized to suspend the
247 license, registration or permit of any person for being out of
248 compliance with an order for support, as defined in Section
249 93-11-153. The procedure for suspension of a license,
250 registration or permit for being out of compliance with an order
251 for support, and the procedure for the reissuance or reinstatement
252 of a license, registration or permit suspended for that purpose,
253 and the payment of any fees for the reissuance or reinstatement of
254 a license, registration or permit suspended for that purpose,
255 shall be governed by Section 93-11-157 or 93-11-163, as the case
256 may be. If there is any conflict between any provision of Section
257 93-11-157 or 93-11-163 and any provision of this chapter, the
258 provisions of Section 93-11-157 or 93-11-163, as the case may be,
259 shall control.



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

262 21-23-8. (1) (a) The purpose of bail is to guarantee
263 appearance and a bail bond shall not be forfeited for any other
264 reason.

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

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



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

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

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

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

316 83-39-27. It is unlawful for a licensee to engage in any of
317 the following activities:

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

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



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

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

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

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

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

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

341 83-39-29. (1) The department may provide information to the
342 district attorney in the district in which a professional bail
343 agent, a soliciting bail agent or bail enforcement agent is
344 domiciled so that proper legal action may be pursued against any
345 licensee who is alleged to have violated any provision of Chapter
346 39 of Title 83. Such licensee is guilty of a misdemeanor and
347 shall be subject to a fine of not more than One Thousand Dollars
348 (\$1,000.00), imprisonment in the county jail for not more than one
349 (1) year, or both. Any insurer violating any provision of Chapter
350 39 of Title 83 may be fined in an amount not to exceed Fifty
351 Thousand Dollars (\$50,000.00).

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



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

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

367 (4) A bail agent, bail enforcement agent or bail enforcement
368 agent from another state shall report to the sheriff's department
369 of the county in which he is attempting to locate a fugitive prior
370 to beginning to look for the fugitive to prove his licensing and
371 legal right to the fugitive. Failure to prove licensing shall be
372 an offense punishable by a fine not to exceed One Thousand Dollars
373 (\$1,000.00).

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

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



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

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

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

