

By: Senator(s) Albritton

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2734

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 BRING FORWARD SECTIONS 83-39-27 AND 83-39-29, MISSISSIPPI CODE OF
7 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

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

11 83-39-1. The following terms when used in this chapter shall
12 have the following meanings:

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

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

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

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

27 (e) "Soliciting bail agent" means any person who, as an
28 agent or employee of a professional bail agent, or as an
29 independent contractor, for compensation or otherwise, shall



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

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

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

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

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

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



63 83-39-3. (1) No person shall act in the capacity of
64 professional bail agent, soliciting bail agent or bail enforcement
65 agent, as defined in Section 83-39-1, or perform any of the
66 functions, duties or powers of the same unless that person shall
67 be qualified and licensed as provided in this chapter. The terms
68 of this chapter shall not apply to any automobile club or
69 association, financial institution, insurance company or other
70 organization or association or their employees who execute bail
71 bonds on violations arising out of the use of a motor vehicle by
72 their members, policyholders or borrowers when bail bond is not
73 the principal benefit of membership, the policy of insurance or of
74 a loan to such member, policyholder or borrower.

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

93 (b) (i) No person who is a spouse of * * * a county or
94 municipal law enforcement official, an employee of a county or
95 municipal law enforcement official or * * * an employee of a law



96 enforcement entity shall write a bond for a person arrested by the
97 spouse or the law enforcement entity which the person's spouse
98 serves as a law enforcement official or employee; violation of
99 this prohibition shall result in license revocation.

100 (ii) No person who is a relative of either a sworn
101 state, county or municipal law enforcement official or judicial
102 official or an employee, independent contractor or employee of any
103 jail or corrections facility that houses state, county or
104 municipal inmates who are bailable, shall write a bond in the
105 county where the law enforcement entity or court in which the
106 person's relative serves is located. "Relative" means a parent,
107 grandparent, child, sister, brother, aunt or uncle. Violation of
108 this prohibition shall result in license revocation.

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

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

115 (3) The department is vested with the authority to enforce
116 this chapter. The department may conduct investigations or
117 request other state, county or local officials to conduct
118 investigations and promulgate such rules and regulations as may be
119 necessary for the enforcement of this chapter. The department may
120 establish monetary fines and collect such fines as necessary for
121 the enforcement of such rules and regulations. All fines
122 collected shall be deposited in the Special Insurance Department
123 Fund for the operation of that agency.

124 (4) Each license issued hereunder shall expire biennially on
125 the last day of September, unless revoked or suspended prior
126 thereto by the department, or upon notice served upon the
127 commissioner by the insurer that the authority of a limited surety
128 agent to act for or in behalf of such insurer had been terminated,



129 or upon notice served upon the commissioner by a professional bail
130 agent that the employment of a soliciting bail agent or bail
131 enforcement agent had been terminated by such professional bail
132 agent. Every license, except for temporary licenses, issued
133 between June 1, 2007, and September 30, 2007, shall expire on
134 September 30, 2009. Each license issued after September 30, 2007,
135 shall expire on the last day of September of each odd-numbered
136 year.

137 (5) The department shall prepare and deliver to each
138 licensee a certificate showing the name, address and
139 classification of such licensee, and shall certify that the person
140 is a licensed professional bail agent, being either a personal
141 surety agent or a limited surety agent, a soliciting bail agent or
142 a bail enforcement agent. In addition, the certificate, if for a
143 soliciting bail agent or bail enforcement agent, shall show the
144 name of the professional bail agent and any other information as
145 the commissioner deems proper.

146 (6) The commissioner, after a hearing under Section
147 83-39-17, may refuse to issue a privilege license for a soliciting
148 bail agent to change from one professional bail agent to another
149 if he owes any premium or debt to the professional bail agent with
150 whom he is currently licensed. The commissioner, after a hearing
151 under Section 83-39-17, may refuse to issue a license for a
152 limited surety agent if he owes any premium or debt to an insurer
153 to which he has been appointed.

154 (7) (a) Before the issuance of any professional bail agent,
155 soliciting bail agent or bail enforcement agent license, the
156 applicant shall submit proof of successful completion of forty
157 (40) classroom hours of prelicensing education approved by the
158 Professional Bail Agents Association of Mississippi, Inc., and
159 conducted by persons or entities approved by the Professional Bail
160 Agents Association of Mississippi, Inc. The hours required by



161 this subsection shall be classroom hours and may not be acquired
162 through correspondence or over the Internet.

163 (b) Beginning on July 1, 2011, in order to assist the
164 department in determining an applicant's suitability for a license
165 under this chapter, the applicant shall submit a set of
166 fingerprints with the submission of an application for license.
167 The department shall forward the fingerprints to the Department of
168 Public Safety for the purpose of conducting a criminal history
169 record check. If no disqualifying record is identified at the
170 state level, the fingerprints shall be forwarded by the Department
171 of Public Safety to the Federal Bureau of Investigation for a
172 national criminal history record check. Fees related to the
173 criminal history record check shall be paid by the applicant to
174 the commissioner and the monies from such fees shall be deposited
175 in the special fund in the State Treasury designated as the
176 "Insurance Department Fund."

177 (8) (a) Before the renewal of the license of any
178 professional bail agent, soliciting bail agent or bail enforcement
179 agent, the applicant shall submit proof of successful completion
180 of continuing education hours as follows:

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

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

187 (b) If an applicant for renewal failed to obtain the
188 required eight (8) hours for each year of the license period
189 during the actual license year in which the education was required
190 to be obtained, the applicant shall not be eligible for a renewal
191 license but shall be required to obtain an original license and be
192 subject to the education requirements set forth in subsection (7).
193 The commissioner shall not be required to comply with Section



194 83-39-17 in denying an application for a renewal license under
195 this paragraph (b).

196 (c) The education hours required under this subsection
197 (8) shall consist of classroom hours approved by the Professional
198 Bail Agents Association of Mississippi, Inc., and provided by
199 persons or entities approved by the Professional Bail Agents
200 Association of Mississippi, Inc. The hours required by this
201 subsection shall be classroom hours and may not be acquired
202 through correspondence or over the Internet.

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

205 83-39-15. (1) The department may deny, suspend, revoke or
206 refuse to renew, as may be appropriate, a license to engage in the
207 business of professional bail agent, soliciting bail agent, or
208 bail enforcement agent for any of the following reasons:

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

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

216 (c) Material misstatement, misrepresentation or fraud
217 in obtaining the license.

218 (d) Willful failure to comply with, or willful
219 violation of, any provision of this chapter or of any proper
220 order, rule or regulation of the department or any court of this
221 state.

222 (e) Conviction of felony or crime involving moral
223 turpitude.

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



226 (g) Being elected or employed as a law enforcement or
227 judicial official.

228 (h) Engaging in the practice of law.

229 (i) Writing a bond in violation of Section
230 83-39-3(2)(b)(i) and (ii).

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

232 (k) Acting as or impersonating a bail agent without a
233 license.

234 (2) In addition to the grounds specified in subsection (1)
235 of this section, the department shall be authorized to suspend the
236 license, registration or permit of any person for being out of
237 compliance with an order for support, as defined in Section
238 93-11-153. The procedure for suspension of a license,
239 registration or permit for being out of compliance with an order
240 for support, and the procedure for the reissuance or reinstatement
241 of a license, registration or permit suspended for that purpose,
242 and the payment of any fees for the reissuance or reinstatement of
243 a license, registration or permit suspended for that purpose,
244 shall be governed by Section 93-11-157 or 93-11-163, as the case
245 may be. If there is any conflict between any provision of Section
246 93-11-157 or 93-11-163 and any provision of this chapter, the
247 provisions of Section 93-11-157 or 93-11-163, as the case may be,
248 shall control.

249 **SECTION 4.** Section 83-39-27, Mississippi Code of 1972, is
250 brought forward as follows:

251 83-39-27. It is unlawful for a licensee to engage in any of
252 the following activities:

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

255 (b) Pay a fee or rebate or give or promise to give
256 anything of value to a jailer, policeman, peace officer, clerk,
257 deputy clerk, any other employee of any court, district attorney



258 or any of his employees or any person who has power to arrest or
259 to hold any person in custody.

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

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

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

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

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

274 **SECTION 5.** Section 83-39-29, Mississippi Code of 1972, is
275 brought forward as follows:

276 83-39-29. (1) The department may provide information to the
277 district attorney in the district in which a professional bail
278 agent, a soliciting bail agent or bail enforcement agent is
279 domiciled so that proper legal action may be pursued against any
280 licensee who is alleged to have violated any provision of Chapter
281 39 of Title 83. Such licensee is guilty of a misdemeanor and
282 shall be subject to a fine of not more than One Thousand Dollars
283 (\$1,000.00), imprisonment in the county jail for not more than one
284 (1) year, or both. Any insurer violating any provision of Chapter
285 39 of Title 83 may be fined in an amount not to exceed Fifty
286 Thousand Dollars (\$50,000.00).

287 (2) Any person who acts or attempts to solicit, write or
288 present a bail bond as a professional bail agent, soliciting bail
289 agent, or bail enforcement agent as defined in this chapter and
290 who is not licensed under this chapter is guilty of a misdemeanor



291 and, upon conviction, shall be subject to a fine of not more than
292 One Thousand Dollars (\$1,000.00), imprisonment in the county jail
293 for not more than one (1) year, or both.

294 (3) Any person who acts or attempts to act, represents
295 himself to be, or impersonates a professional bail agent, a
296 soliciting bail agent or a bail enforcement agent as defined in
297 this chapter by attempting to arrest or detaining any person, and
298 who is not licensed under this chapter, is guilty of a misdemeanor
299 and, upon conviction, shall be subject to a fine of not more than
300 Five Thousand Dollars (\$5,000.00), imprisonment for not more than
301 one (1) year, or both.

302 (4) A bail agent, bail enforcement agent or bail enforcement
303 agent from another state shall report to the sheriff's department
304 of the county in which he is attempting to locate a fugitive prior
305 to beginning to look for the fugitive to prove his licensing and
306 legal right to the fugitive. Failure to prove licensing shall be
307 an offense punishable by a fine not to exceed One Thousand Dollars
308 (\$1,000.00).

309 (5) Any person charged with a criminal violation who has
310 obtained his release from custody by having a professional bail
311 agent, insurer, agent of a bail agent or insurer, or any person
312 other than himself furnish his bail bond and who fails to appear
313 in court, at the time and place ordered by the court, is guilty of
314 "bond jumping" and, upon conviction, shall be subject to a fine of
315 not more than One Thousand Dollars (\$1,000.00), imprisonment in
316 the county jail for not more than one (1) year, or both, and
317 payment of restitution for reasonable expenses incurred returning
318 the defendant to court.

319 (6) Any person who knowingly and intentionally aids and
320 abets any person in the commission of the offense of bond jumping,
321 whether the person committing the principal offense is actually
322 convicted, shall be guilty of aiding and abetting bond jumping and
323 upon conviction, shall be subject to a fine of not more than One



324 Thousand Dollars (\$1,000.00) or imprisonment in the county jail
325 for not more than one (1) year, or both, and payment of
326 restitution for reasonable expenses incurred in returning the
327 defendant to court. Any person who is convicted of aiding and
328 abetting shall be jointly and severally liable for payment of
329 restitution for reasonable expenses incurred in returning the
330 defendant to court.

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

335 **SECTION 6.** This act shall take effect and be in force from
336 and after July 1, 2010.

