

BAIL BOND PERSONNEL LICENSURE ACT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5536 and 5537

Sponsor: Rep. Bert Johnson

Committee: Regulatory Reform

Complete to 12-8-09

A SUMMARY OF HOUSE BILLS 5536 AND 5537 AS INTRODUCED 10-22-09

House Bill 5536 would create a new scheme for licensing bail bond agents, bail bond runners, and fugitive recovery agents. House Bill 5537 would amend the bail provisions in the Michigan Penal Code to conform to the requirements of HB 5536.

House Bill 5536 – Bail Bond Personnel Licensure Act

The bill essentially establishes a specific license for bail agents that must be obtained, (it is assumed), in addition to the existing general insurance law requirements on surety insurance agents. Currently, there is no specific state law concerning the licensure of bail bond agents. However, bail bond agents act, in effect, as agents of property and casualty insurers, and therefore must meet the applicable licensing standards for insurance agents.¹ The bill would also require a license for fugitive recovery agents and bail bond runners.

Bail Bond Agent License Required: The bill would require surety bail agents to obtain a license from the Department of Energy, Labor, and Economic Growth, Office of Financial and Insurance Regulation (OFIR), effective January 1, 2010, in order to engage in the business of a bail agent.² Additionally, the bail agent would have to register with the State Court Administrative Office (SCAO).

For property bail agents, the bill would require, effective January 1, 2010, that they be authorized by an order of the circuit court to engage in business.³ Authorization by the court would expire at the end of the calendar year. Beginning January 1, 2011, property bail agents would have to also be licensed by OFIR and registered with the SCAO, in order to engage in the business of a property bail agent.⁴

Licenses would only be issued on an individual basis.

¹ See, a series of frequently asked questions (FAQs) developed by OFIR concerning bail bond writers and bounty hunters, [http://www.michigan.gov/dleg/0,1607,7-154-10555_13648-141139--,00.html].

² For an overview of the surety bond process see, State Court Administrative Memorandum 2007-05, August 9, 2007, [<http://courts.michigan.gov/scao/resources/other/scaoadm/2007/2007-05.pdf>].

³ Property bail agents are not linked to an insurance company and use other resources as security in providing bail.

⁴ The circuit court approval would continue to be required in 2011 and beyond.

Use of Titles: A person could not use a title or description giving the impression that he or she is a bail bond agent unless licensed by OFIR and registered with the SCAO.⁵ A violation of this provision would be a misdemeanor punishable by up to 91 days imprisonment and/or a fine of up to \$500 for a first violation, and up to 2 years imprisonment and/or a fine of up to \$4,000 for each second or subsequent violation. A person convicted of a second violation would be permanently disqualified from being issued a bail bond agent license.

Bail Bond Agent Licensure Requirements: To be licensed as a bail bond agent, an individual would have to pass a written examination and be of "good moral character."⁶ Current bail bond agents – those engaged in business prior to the bill's effective date – would be exempt from the examination requirement.

Identification: Upon licensure, OFIR would provide each bail bond agent an identification card containing the agent's photo, name, and other identifying information. The identification card would have to be carried by the agent when acting as a bail bond agent. Additionally, each agent would be issued a seal by OFIR that would include the agent's name, the registration number, the phrase "Bail Bond Agent, State of Michigan" and other information OFIR considers to be necessary. Bonds and other documents filed by the agent with the court or local law enforcement agent would have to be stamped with the seal. The seal could not be loaned to another individual, and would have to be returned to the state within 7 days after the licensed or registration is revoked, suspended, or cancelled. The penalty for failing to comply with these provisions is a misdemeanor punishable by up to 90 days imprisonment and/or a fine of up to \$500.

Bail Bond Agent Fees: The bill would establish the following schedule of fees, to defray the costs of OFIR in administering the bill:

Application Processing Fee	\$35.00
Supplemental Application Processing Fee	\$20.00
Examination Fee	\$150.00
Examination Review Fee	\$25.00

SCAO Registration: The bill would also require licensed bail bond agents to register with the State Court Administrative Office (SCAO). The SCAO would be required to maintain, and update monthly, a registry of all registered bail bond agents. The registry would consist of the individual agent's name, business name and telephone number, the appointing surety, a power of attorney from the surety specifying the agent and the financial limit of the agent's authority, and the areas in the state where the agent is authorized to engage in business. For property agents, the registry would have also have

⁵ The bill doesn't seem to address the situation of property bail agents, who are only required to be approved by the local circuit court in 2010, and aren't required to be licensed or registered until 2011.

⁶ The phrase "good moral character" is not defined in the bill. Both the Occupational Code, 1980 PA 299, MCL 399.104, and the Insurance Code, 1956 PA 218, MCL 500.1200, refer to the definition used in 1974 PA 381, MCL 338.41, where it is defined to mean "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

to include the name of the counties in which the agent is authorized (by circuit court order) to engage in business.

The registry would be made available to local law enforcement (to make publicly available) on the SCAO's website (<http://courts.michigan.gov/scao>). The removal from the registry by the SCAO would occur upon request from OFIR or, for property agents, from a request from an authorizing circuit court. The bill would also impose on each agent a \$40 registration fee to be used to defray the costs of the SCAO in administering the act.

Fugitive Recovery Agents: The bill will would also license "fugitive recovery agents," defined in the bill to mean a person employed (on a contract or salary basis) by a bail bond agent or surety to enforce the terms and conditions of a defendant's release from custody on bail in a criminal proceeding, including locating, apprehending, and transporting a defendant.⁷

License Requirements: To be licensed by OFIR as a fugitive recovery agent, a person would have to meet the following criteria:

1. Pass a two-part examination administered by OFIR, with one part testing the applicant's knowledge of general insurance laws and regulations and the second part testing knowledge of pre-trial release and bonds, SCAO policies regarding bonds, the Michigan court system, the Michigan surety bond forfeiture process, judgments, and the surety's right to arrest.
2. Hold a conceal pistol license.
3. Have never been convicted of a felony
4. Be of good moral character.

Additionally, an applicant for a fugitive recovery license would also have to successfully complete at least 40 hours of classroom training on applicable state and federal laws and rules and at least 40 hours of field training (weapons safety, use of force, defensive tactics, restraining and detaining individuals). Individuals that have completed the training required by a municipal, state, or federal law enforcement agent or a branch of the armed forces to act as a peace officer would be exempt from the pre-licensure requirements. Once licensed as a fugitive recovery agent, individuals would have to certificates on the proper use of Tasers and pepper sprays within 12 months of being licensed.

⁷ See, Francis X. Donnelly, "Michigan bounty hunters work outside the law," *Detroit News* (on-line), 7 March 2009, [<http://detnews.com/article/20090307/METRO/903070385/Michigan-bounty-hunters-work-outside-the-law>]. For a review of other state laws regarding fugitive recovery agents, see, Marcus Nieto, Peter Lewicki, and Paul Lewicki, *What are the Qualifications for Bounty Hunters in California?*, California State Library, California Research Bureau, November 2007, [<http://www.library.ca.gov/crb/07/07-010.pdf>].

Violations: A bail bond agent or surety would be prohibited from employing or retaining the services of a fugitive recovery person who has been convicted of a felony. Violating this provision and the licensure requirement provisions would be a misdemeanor punishable by up to 91 days imprisonment and/or a fine of up to \$500 for a first violation, and up to 2 years imprisonment and/or a fine of up to \$4,000 for each second or subsequent violation. A person convicted of a second violation would be permanently disqualified from being issued a bail bond agent license.⁸

Identification: Similar to bail bond agents, OFIR would issue identification cards to licensed fugitive recovery agents, which the agents would have to carry at all times when acting as a fugitive recovery agent.

Fugitive Recovery Agent Fees: The bill would establish the following schedule of fees, to defray the costs of OFIR in administering the bill:

Application Processing Fee	\$35.00
Supplemental Application Processing Fee	\$20.00
Examination Fee	\$150.00
Examination Review Fee	\$25.00

Bail Bond Runner License Requirement: In addition, the bill would also require a license to act as a "bail bond runner", i.e. a person who delivers bail bonds to courts and jails on behalf of a bail bond agent. A bail bond runner would be appointed by a sponsoring bail bond agent and could perform services only for the sponsoring agent and other bail bond agents employed by the sponsoring agent. A runner could only be appointed by one sponsoring agent. An individual acting as a bail bond runner would have to be licensed by OFIR, effective January 1, 2010.

Bail Bond Runner License Requirements: To be licensed as a bail bond runner, an individual would have to be at least 18, a state resident, complete a high school diploma or GED, be able to "competently fulfill the responsibilities of a bail bond runner," and have no current or prior violations of state insurance or bail bond laws or regulations. Additionally, the bail bond runner would have to have a current, valid concealed pistol permit (if applicable), or be subject to a criminal history (fingerprint) check.

Prohibited Activities: A bail bond runner could not engage in the business of a bail bond agent or, unless licensed, fugitive recovery agent; countersign bail bond powers of attorney; or possess any power of attorney or similar document unless it contains the bail bond agent's seal; collect money; take applications for bail; execute bail bonds; or solicit bail bond business.

Bail Bond Runner Application: To be licensed by OFIR, a bail bond runner would have to submit an application. The application would have to include a written appointment from the sponsoring bail bond agent, and written affidavits from the applicant and the

⁸ For fugitive recovery agents, presumably the bill intends to say that those individuals who commit a second violation would be permanently disqualified from being issued a fugitive recovery agent license.

sponsoring agent attesting that the applicant has received training in applicable bail laws and procedures. The applicant would also have to disclose to OFIR whether he or she has been licensed in another state to act as a bail bond runner and whether the license was ever suspended or revoked. (If the applicant was licensed elsewhere, the application should also include contact information of the prior bail bond agents for whom the applicant worked.).

Bail Bond Runner Violations: A person who violates the bail bond runner licensure requirements would be guilty of a misdemeanor punishable by up to 91 days imprisonment and/or a fine of up to \$500 for a first violation, and up to 2 years imprisonment and/or a fine of up to \$4,000 for each second or subsequent violation. A person convicted of a second violation would be permanently disqualified from being issued a bail bond agent or bail bond runner license.

Bail Bond Runner Fees: The bill would establish the following schedule of fees, to defray the costs of OFIR in administering the bill:

Application Processing Fee	\$35.00
Supplemental Application Processing Fee	\$20.00
Examination Fee	\$150.00
Examination Review Fee	\$25.00

House Bill 5537 – Michigan Penal Code

The bill would amend the bail bond agent requirements in the Michigan Penal Code, 1931 PA 328, MCL 750.167b, to conform to the licensure, registration, and listing requirements contained in House Bill 5536.

Under the Michigan Penal Code, each circuit court is required to maintain a list of bail bond agents in business within the county. (This listing is not currently compiled by the SCAO.) This listing is to be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and in other places where persons are detained. (Additionally, some circuit courts post the listing on their websites.)

Consistent with HB 5536, the bill assigns responsibility for compiling the list of bail bonds agents to the SCAO, continues the requirement that the listing be conspicuously posted (including the SCAO website), but specifically excludes state correctional facilities as a place where the list should be posted.

FISCAL IMPACT:

House Bill 5536: The Office of Financial and Insurance Regulation estimates that it would need at least 3.0 FTE positions to administer the act. Based on average salary and benefit costs, the employee costs would be approximately \$252,600. The costs to the office would be offset by a schedule of fees imposed to process applications and, when applicable, administer licensing examinations. Individuals currently acting as bail bond agents would be exempt from the examination requirements, and the associated \$175 in

fees. In all, fees generated by the bill would generate approximately \$26,600 to \$47,600 in revenue. The remaining program costs would likely be supported by other OFIR (restricted) fund sources given that OFIR has no GF/GP appropriation.

There are varying estimates as to the number of individuals actively serving as bail bonds agents. In reviewing the authorized bail bond agent lists (from 2008) maintained by 30 of the 57 circuit courts, the HFA found that there were 452 bail bond agents *authorized* to write bail in those counties. Given that many agents operate in multiple counties, it is anticipated that the actual number of authorized bail bond agents wouldn't be appreciably higher. At most, there could be 500 or so authorized agents. However, industry experts caution that the number of authorized bail bonds agents *actually* writing bail is likely to be far lower than the number authorized. They estimate that the number of active bail bonds agents to be approximately 160.

It's uncertain what impact the additional licensure requirements (above and beyond the general insurance law requirements) would have on the decision of authorized agents to seek additional licensure, although many inactive agents could very well opt out of the bail bonds business altogether. Based on this range of potential licensees the \$35 application fee would generate approximately between \$5,600 and \$17,500. It's anticipated that the \$20 supplemental application license fee (i.e. a late fee) wouldn't generate a significant amount of revenue, nor would the combined \$175 in examination fees, given that the bill exempts from the examination requirements current bail bonds agents who are "engaged in the business" of a bail bond agent and are included in the list of authorized bail agents maintained by the circuit courts. It's not clear whether authorized, but inactive, bail bond agents would be considered to be "engaged in the business" and thus exempt from the examination requirements or if they would have to successfully pass the examination. If the examination is required and, for example, an additional 100 authorized, but inactive agents sought to be licensed under the bill, the examination fees would generate an additional \$17,500 in revenue.

The bill also imposes the same fee schedule on fugitive recovery agents. Industry experts estimate that there are about 20 active fugitive bail bond agents who are not bail bond agents, although the number is likely to be on the rise as the industry falls under OFIR regulation.⁹ Industry experts also estimate that about 60 bail bond agents actively enforce the conditions of bail (i.e. act as "fugitive recovery persons" under the bill), and would also require a separate fugitive recovery license under the bill. Together, the bill would generate (on the low end) approximately \$2,800 in fugitive recovery license application fees and \$14,000 in examination fees.

The bill also imposes the same fee schedule on bail bond runners. Industry experts also estimate that there are about 20 active bail bond runners in the state, and do not anticipate the number appreciably increasing once regulated by OFIR. Based on this estimate, the application process fee would generate approximately \$700, while the examination fees would generate an additional \$3,500 in revenue.

⁹ For example, a search of the Washington Department of Licensing database yields more than 100 "bail bond recovery agents" licensed by the state. See, [<https://fortress.wa.gov/dol/dolprod/bpdLicenseQuery/>].

Finally, the bill imposes a \$40 registration fee for each bail bond agent and bail bond runner registered with the SCAO. Based on the estimated number of OFIR licensees (SCAO registrants) the bill would generate approximately \$7,200-\$20,800 in revenue for the SCAO offsetting, at least partially, its costs in maintaining the registry.

House Bill 5537: The bill would have an indeterminate, but likely negligible, fiscal impact on the judicial branch. Any fiscal impact would be the result of increased administrative costs to the Judiciary for preparing and updating a statewide list of licensed bail bond agents. The costs to the Judiciary would be offset by a \$40 annual registration fee imposed against each bail bond agent and bail bond runner, as provided in HB 5336.

Fiscal Analysts: Mark Wolf
Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.