
SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2021 - 2022 Regular

Bill No:	AB 2043	Hearing Date:	June 22, 2022
Author:	Jones-Sawyer		
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Urgency:	No	Fiscal:	Yes
Consultant:	Brian Flemmer		

SUBJECT: Bail Bonds

DIGEST: Prohibits a person from performing the activities of a bail fugitive recovery agent without a license, and requires an applicant for a bail fugitive recovery agent's license to file a surety bond, a policy of liability insurance, and a notice of appointment with the Insurance Commissioner (IC).

ANALYSIS:

Existing law:

- 1) Authorizes the IC to regulate and license bail agents and the issuance of bail bonds.
- 2) Provides that bail licenses include bail agents' licenses, bail permittees' licenses, and bail solicitors' licenses. (Insurance Code Section 1801)
- 3) Permits a bail agent licensee to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer, as specified.
 - a) Requires a bail agent licensee to file with the IC a surety bond of \$1,000. (Insurance Code Section 1802(a))
 - b) Requires an applicant for a license to act as a bail agent to file with the IC a notice of appointment executed by a surety insurer, as specified. (Insurance Code Section 1802.1(a))
- 4) Establishes the Bail Fugitive Recovery Persons Act (Act) which requires that all bail fugitive recovery persons meet specified training requirements and comply with particular laws, including but not limited to, being at least 18 years of age and completing various courses and classes. (Penal Code Section 1299 et seq.)
- 5) Defines "bail fugitive recovery person" as a person who is provided written authorization, as specified, by the bail or depositor of bail, and is contracted to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court jail, or police department, and any person who is employed to assist a bail or depositor of bail to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department. (Penal Code Section 1299.01, subd. (d).)
- 6) Requires a bail fugitive recovery person to have in their possession completed certificates of required training at all times when performing their duties. (Penal Code Section 1299.04)

- 7) Requires the IC to charge and collect specified fees for an application for a new or renewed bail license by a bail agent, bail permittee, or bail solicitor. (Insurance Code Section 1811)
- 8) Provides that no person other than a certified law enforcement officer shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions: (Penal Code Section 1299.02)
 - a) They are a person licensed by California Department of Insurance (CDI), as specified;
 - b) They are a bail fugitive recovery person who has been provided written authorization by the bail, depositor of the bail, and is contracted to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate authorities, as specified;
 - c) They are licensed by the State of California as a private investigator; or,
 - d) They hold a private investigator's license issued by another state, is authorized by the bail or depositor of bail, to apprehend a bail fugitive, and is in compliance with provisions of law that govern the apprehension of a fugitive that has been admitted to bail in another state.
- 9) Existing law makes a violation of the Act a misdemeanor, punishable by a fine of \$5,000, or imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment.

This bill:

- 1) Prohibits a person from performing the activities of a bail fugitive recovery agent, or soliciting or negotiating to perform the activities of a bail fugitive recovery agent, unless properly licensed, as specified.
- 2) Adds "bail fugitive recovery agent licenses" to the list of "bail licenses."
- 3) Requires a bail fugitive recovery agent to file with the IC:
 - a) A bond having an admitted surety insurer as surety in the amount of \$1,000; and
 - b) A policy of liability insurance that provides minimum limits of insurance of \$1 million for any one loss or occurrence due to either bodily injury or death, or property damage, or both.
- 4) Authorizes the IC to delay the implementation of the liability insurance requirement based on either the reasonable lack of availability or affordability, or both, of liability for bail fugitive recovery agents.
- 5) Provides that bail agents, bail permittees, and bail solicitors who apply for a bail fugitive recovery agent license are exempt from the bail fugitive recovery agent filing, provided they have a current surety bond and liability insurance policy on file with the IC.

- 6) Requires an applicant for a license to act as a bail fugitive recovery agent to file with the IC a notice of appointment executed by a surety insurer authorizing the applicant to act on behalf of, and pursuant to, the instructions of the appointing license holder.
- 7) Provides that bail fugitive recovery agent's appointment continues until:
 - a) Termination of the bail fugitive recovery agent's license;
 - b) The end of the license, if the fee for filing a renewal application is not paid; or,
 - c) The filing of a notice of termination by the insurer or by the bail fugitive recovery agent.
- 8) Provides that bail agents and bail permittees who apply for a bail fugitive recovery agent license are exempt from filing a notice of appointment executed by a surety insurer with the IC if:
 - a) The bail agent or bail permittee has one or more surety appointments on file with the IC; and,
 - b) The surety providing the appointments has authorized the bail agent or bail permittee to work under their authority as a bail fugitive recovery agent.
- 9) Requires a bail fugitive recovery agent to disclose on their license application and renewal to CDI whether they are also a bail agent, permittee, or solicitor.
- 10) Requires a bail fugitive recovery agent to carry an identification card issued by the IC.
- 11) Provides that a bail fugitive recovery agent, and all bail licensees, shall not have been convicted of a felony unless the person is licensed, as specified.
- 12) Requires an applicant to complete a minimum of 20 hours of classroom education on the duties and responsibilities of a bail licensee.
- 13) Requires the IC to approve or disapprove applicants to provide education for licensure within 90 days, for an approval period of two years, and authorizes investigation of alleged violations of education providers. Requires providers to consult the California State Sheriff's Association, the California District Attorneys Association, and the County Counsel's Association of California prior to submission of course outlines for approval by the IC.
- 14) Requires an applicant to complete a 40-hour power of arrest course certified by the Commission on Peace Officer Standards and Training (POST) in order to be eligible to take the examination required to be licensed.
- 15) Provides that the 40-hour power of arrest course requirement applies to bail fugitive recovery agents or to bails who hire, train, or designate assignments for bail fugitive recovery agents.
- 16) Requires 12 hours of continuing education each two year license term, authorizes continuing education to be completed over the internet if the course has a written

final exam, and exempts licensees from this requirement if the licensee submits satisfactory proof to the IC that the licensee has been in good standing for 30 continuous years and is over 70 years of age.

- 17) Authorizes the IC to make reasonable rules and regulations necessary for the convenient administration and enforcement of this chapter.
- 18) Adjusts various bail licensees' fees up approximately 10%.
- 19) Requires the IC to publish and maintain a list of names of bail fugitive recovery agents' licenses on CDI's public website, together with their license numbers and any other appropriate information.
- 20) Prohibits a person, other than a certified law enforcement officer, from apprehending, detaining, or arresting a bail fugitive unless that person is one of the following:
 - a) A bail, as specified, who is also a bail fugitive recovery agent;
 - b) A bail fugitive recovery agent; or,
 - c) A licensed private investigator, as specified, who is also a bail fugitive recovery agent.
- 21) Provides that the prohibition on apprehending, detaining, or arresting a bail fugitive does not apply to a citizen's arrest, as specified, provided that no consideration is paid or allowed to any person effecting an arrest.
- 22) Prohibits a person holding a bail license issued by another state from apprehending, detaining, or arresting bail fugitives in California.
- 23) Provides no reimbursement to local agencies for costs incurred.
- 24) Provides that the provisions of the bill (except license fee adjustments in #18) become effective on July 1, 2023.

Background

According to the Author:

Current law on bail fugitive recovery persons, colloquially known as bounty hunters, is inadequate and only limited to unenforceable education and notice requirements. With little-to-no in-house supervision by those who hire bounty hunters, the California Department of Insurance has become their de facto watchdog despite the fact that bounty hunters are not licensed and do not pay any fees to CDI. By requiring bounty hunters to become licensed, AB 2043 will increase oversight and professionalism in the bail/bond industry by ensuring applicants pass fingerprint-based background checks; enhancing education and training of licensee applicants; tightening industry supervision of bounty hunters; providing proper identification to law

enforcement, the courts, and the public; and, providing an accurate size and scope of who is operating as a bounty hunter in this state.

Role of CDI in Regulating the Bail Industry. CDI has regulated the bail bond business since the passage of the Bail Bond Regulatory Act in 1937. A bail bond is a surety bond, which is posted by a bail bond company to the court as a guarantee for an arrestee's appearance at all court dates. CDI licenses bail agents, bail permittees, and bail solicitors, in addition to regulating premiums for bail bond surety companies.

In 2018, CDI issued a report recommending ways to improve oversight and regulation of the bail industry, specifically calling for a licensing requirement. According to the CDI report:

Bounty hunters, also known as bail fugitive recovery persons, earn their living by tracking down bail fugitives. If an accused person out on bail fails to appear at his or her court date, the bail agent who posted the bond for the accused may contract with a bounty hunter to retrieve the person. Of the forty-two states that allow bounty hunting, there are twenty-one that require a bounty hunter license. In California, oversight of these activities is limited to certain education, notice, and conduct requirements outlined in California Penal Code §1299-1299.12. CDI is tasked with investigating bail fugitive complaints despite the fact that bounty hunters are not licensed and do not pay any fees to CDI. According to data provided by the sureties, there were approximately 37,075 forfeitures in 2013, which represents a significant fugitive workload. Bounty hunters who are not already licensed bail agents in California should be required to obtain a license from CDI, which would include the passage of a California licensing examination and passage of a fingerprint-based background check done by both the California Department of Justice and the Federal Bureau of Investigation.

According to the author and CDI, the sponsor of this bill, because bail fugitive recovery persons are directly associated with a bail bond transaction, and bail bond consumer complaints and investigative cases can involve bail fugitive recovery persons, CDI has become their de facto regulator, despite the fact that bail fugitive recovery persons are not licensed and do not pay any fees to CDI. For these reasons, CDI appears to be the best suited state agency to license and oversee the regulation of bail fugitive recovery persons.

Surety and Liability Insurance Requirements. This bill would require an applicant for a bail fugitive recovery agent license to file with the IC a surety bond of \$1,000 and a policy of liability insurance with minimum limits of \$1,000,000, if the applicant for the bail fugitive recovery agent license does not already have these items on file with the Commissioner as a bail agent, bail permittee, or bail solicitor.

Additionally, this bill would require an applicant for a bail fugitive recovery agent license to file with the IC a notice of appointment executed by a surety insurer authorizing the licensee to act on behalf of the surety. Bail agents and bail permittees, who apply for a bail fugitive recovery agent license, would be exempt from this requirement if they already have one or more surety appointments on file with the IC.

Generally, bail bonds are underwritten and issued by licensed bail agents, which act as the appointed representatives of licensed surety insurance companies. A bail agent is authorized to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer. Practically speaking, the bail agent then signs a contract, known as a surety bond, in which it agrees to be liable for the full bail amount if the defendant fails to appear in court or otherwise forfeits their bail.

This surety bond is backed by a surety insurance company. Therefore, the IC requires bail agents to provide notice of appointment to by a surety insurer to guarantee the bail agent is authorized to act on behalf of the insurer in providing bail bonds.

A bail fugitive recovery agent is not authorized to solicit, negotiate, or effect the undertaking of bail and not directly engaged in this aspect of bail bonds.

However, surety insurers normally make the bail agents with whom they are contracted liable for any forfeiture losses. Therefore, bail agents are incentivized to hire aggressive bail fugitive recovery persons, as a single forfeiture could theoretically put the bail agent out of business. Bail fugitive recovery persons also have an additional layer of financial incentive, as they are generally only paid if they bring the defendant back to custody.

Requiring an applicant for a bail fugitive recovery agent license to file with the IC a surety bond of \$1,000 and to also receive an appointment with a surety will better allow CDI to track which licensed bail fugitive recovery agents are working for which surety. The \$1,000 surety also provides a guarantee that a licensed bail fugitive recovery agent will comply with all applicable laws and regulations. Additionally, because CDI would receive notifications of termination of appointments, including when the appointments are terminated for a violation of law, this will allow CDI to have additional oversight of licensed bail fugitive recovery agents.

There is a practical consideration in terms of requiring applicants for a bail fugitive recovery agent license to be appointed by a surety insurer. Many bail fugitive recovery persons work as independent contractors. So, a licensed bail fugitive recovery agent would have to file multiple appointments. This could be confusing and cumbersome for those working as independent contractors. However, according to CDI, there are only 16 sureties, and four of those do the bulk of the bail bond business in California. Additionally, there is nothing in this bill that would prohibit a bail fugitive recovery person from proactively obtaining appointments as part of the licensing process.

The \$1,000,000 liability policy this bill would require applicants for a bail fugitive recovery agent license to carry helps to provide a safeguard for individuals that may be harmed by a licensed bail fugitive recovery agent. The amount of the liability policy is similar to what is required for licensed private investigators and private patrol operators. (See Business and Professions Code Sections 7520.3 and 7583.39)

Bail Fugitive Recovery Persons Act. The Act was established in 1999 in response to California lawmakers' concerns about some "bounty hunters" retrieving fugitives in unlawful ways. In 2004, the Legislature revisited the Act and extended its sunset date to January 1, 2010. Following the sunset of the Act, the CDI Investigation Division experienced a significant amount of cases in which bail fugitive recovery persons overstepped appropriate, if not legal, boundaries in their apprehension of

bail fugitives. As a result, AB 2029 (Ammiano, Chapter 747, Statutes of 2012) re-established the Act and added training requirements.

In California, under the Act, a bail fugitive recovery person is only required to be at least 18 years of age, have no felony convictions, receive written authorization to work under a licensed bail agent, complete the Commission on Peace Officers Standards and Training's (POST) 40-hour power-of-arrest course, and complete the CDI 20-hour educational course.

Recent Allegations and Incidents Involving Bail Fugitive Recovery Persons. Allegations and incidents involving bail fugitive recovery persons have drawn increased attention to the profession. CDI is aware of incidents of burglary, robbery, homicide, unlicensed activity, theft, assault, physical threats and coercion, misrepresentation, kidnapping, extortion, vandalism, illegal solicitation, and bail agents hiring bail fugitive recovery persons who are convicted felons.

In one high profile case from April 2021, a bail fugitive recovery person shot and killed a Palm Springs resident, despite noting that the resident had no warrants out for his arrest and the resident had not failed to appear in court. Additionally, the bail fugitive recovery person had prior felony convictions, and thus should not have been operating as a bail fugitive recovery person nor should have been in possession of a firearm. In this case, the bail fugitive recovery person has been charged with murder. However, CDI has no recourse against the bail fugitive recovery person, because CDI does not currently license and regulate bail fugitive recovery persons. CDI has moved to revoke the licenses of the bail agents that hired the bail fugitive recovery person.

Other recent, troubling situations include the shooting of a military veteran with PTSD after bail fugitive recovery persons forced their way in through his residence's window, and bail fugitive recovery persons breaking into an innocent family's home, who had no relation to the individual the bail fugitive recovery persons were targeting.

Fee Increases. The moderate increases in application and renewal application fees for bail agents, bail permittees, and bail solicitors that are proposed in this bill merely codify the current fee amounts that went into effect March 3, 2019 pursuant to CDI procedures. ("Schedule of Fees and Charges Effective March 3rd, 2019," www.insurance.ca.gov)

Suggested Amendments

This bill is double referred to the Committee on Public Safety. Due to the short bill hearing time frame, amendments this Committee may recommend will have to be adopted in the next committee. The American Bail Coalition, in opposition to the bill, has raised two concerns regarding the operation of the proposed licensing structure and its requirements. First, that this bill could complicate the process for recovery of bail jumpers from other states. Second, that requiring recovery agents be appointed by surety insurers is impractical. Specifically, the licensing structure currently in place for Bail Agents is substantially similar to the licensing structure this bill would create for Fugitive Recovery Agents. Under existing practice, a surety insurer will appoint the bail agent, who issues the bail bond. If the person out on bail becomes a fugitive, the bail agent hires a fugitive recovery agent to find and bring that person to court, in order to avoid paying the bail. This appointment process is a contract where the bail agent

assumes the responsibility of the surety insurer, being so appointed to write bonds in its place. The bill as written would require bail fugitive recovery agents to receive appointment from the surety insurer. Opponents note appointment can take weeks, and existing practice makes including the requirement for recovery agents impractical, as they are hired by bail agents to begin work immediately when someone skips bail. The Committee may wish to amend the bill to clarify out of state recovery process and remove the appointment requirement for recovery agents.

Related/Prior Legislation

AB 243 (Wildman, Chapter 426, Statutes of 1999) limited regulation of bounty hunters to education, notice, and conduct requirements.

AB 2238 (Spitzer, Chapter 166, Statutes of 2004) extended the sunset date of the Bail Fugitive Recovery Persons Act from January 1, 2005 to January 1, 2010 and directed the California Research Bureau in the California State Library to conduct a study of the Act.

AB 2029 (Ammiano, Chapter 747, Statutes of 2012) reenacted the Bail Fugitive Recovery Persons Act, regulating persons who arrest and return fugitive defendants to court, and required a 20 hour training course.

ARGUMENT IN SUPPORT:

The Sponsor of the bill, CDI, writes in support:

The California Department of Insurance (CDI) identified licensing of bail fugitive recovery persons as a needed reform in 2018. Particularly since the failure of Proposition 25 to end cash bail in 2020, my Department has been actively partnering with the Legislature to reform the bail industry. By expanding our oversight over bail fugitive recovery persons, AB 2043 would further the interest of public safety and protect the public from well-documented abuses.

Bail fugitive recovery persons, also commonly known as bounty hunters, earn their living by tracking down people out on bail who have failed to appear in court, also known as bail fugitives. Bail fugitive recovery persons can either be licensed bail agents or unlicensed individuals who are hired by a bail agent or a bail company to do fugitive recovery work on the licensee's behalf. Their objective is to apprehend, arrest, and surrender bail fugitives back to custody.

In 1999, California required bail fugitive recovery persons to maintain limited education, notice, and conduct requirements; however, no entity was tasked with overseeing or enforcing these requirements, causing regulation to primarily occur after-the-fact. Consequently, because bail fugitive recovery persons are directly associated with a bail bond transaction, my Department often works investigative cases and receives consumer complaints which involve bail fugitive recovery persons, effectually making us their de facto regulator despite the fact that bail fugitive recovery persons are not licensed by us.

To my Department's knowledge, recent allegations involving bail fugitive recovery persons include burglary, robbery, homicide, theft, coercion, misrepresentation, kidnapping, extortion, and hiring convicted felons. The reason bail fugitive recovery persons resort to these extreme measures to pursue bail fugitives is a financial one: if a bail fugitive recovery person fails to find a fugitive, they will not get paid, and the bail agent who posted the bond will owe the full bail amount to the court. This strong financial incentive combined with the current ability for these individuals to self-regulate fails to protect the public from a profession which largely mimics law enforcement and can subject consumers to both dangerous and traumatizing situations while providing no recourse to make harmed consumers whole. The status quo is not enough and I am proud to sponsor this important consumer protection measure to further rein in bail fugitive recovery persons.

Evolving the requirements for California's current bail fugitive recovery person program into a formal professional licensing program would allow my Department to ensure that: 1) appropriate education and training requirements are met prior to license; 2) applicants pass fingerprint-based background checks done by both the California Department of Justice and the Federal Bureau of Investigation; 3) out-of-state bail fugitive recovery persons are prohibited from working in California; 4) law enforcement, consumers, and the courts are able to expeditiously identify licensees; and, 5) harmed consumers have an avenue to collect damages. In addition, a bail fugitive recovery license would tighten supervision within the industry itself by requiring bail fugitive recovery persons to obtain and maintain an active appointment with a surety insurer.

We stand with our fellow law enforcement agencies in protecting the public from actions by bail licensees that threaten people's safety and holding them accountable when they violate California law and the terms of their license. My Department's investigators and legal staff have a strong record of using our authority to hold bail licensees accountable to California laws. AB 2043 would strengthen our ability to protect the public and prevent future violations of law that threaten public safety.

As California's legislators and judges continue to consider broader reforms to the state's money bail system, AB 2043 provides a straightforward and necessary approach to advance consumer protection and promote public safety by helping curtail reckless pursuits.

ARGUMENT IN OPPOSITION:

The American Bail Coalition raises concerns that requiring surety insurers to appoint fugitive recovery agents directly, instead of bail agents making the appointment, will be impractical and result in no fugitive recovery agents receiving licensure. They also argue that \$1 million liability insurance policies are not available for fugitive recovery agents.

SUPPORT:

California Department of Insurance (Sponsor)
California Public Defenders Association
Consumer Attorneys of California
Lawyers' Committee for Civil Rights – San Francisco

OPPOSITION:

American Bail Coalition

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