

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 854

INTRODUCER: Senator Abruzzo

SUBJECT: Bail Bonds

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Pre-meeting
2.			CJ	
3.			JU	

I. Summary:

SB 854 states that only a licensed, appointed, and registered bail bond agent may transmit or post an electronic bail bond with attached power of attorney. The bail bond agent may only transmit or post electronic bonds in a judicial circuit if the agent is both registered in and has an office and agency physically located in a county within the judicial circuit. Electronic bail bonds will be available if the sheriff for the judicial circuit agrees to accept electronic bonds.

II. Present Situation:

Bail

Under ch. 903, F.S., “bail” and “bond” includes all forms of pretrial release.¹ The monetary component of pretrial release may be met by a surety amount. A criminal surety bail bond is construed as a commitment by and obligation upon a bail bond agent to ensure the defendant appears at all subsequent criminal proceedings and fulfills all conditions of the bond.² In criminal actions, bonds given by defendants before trial until appeal must be approved by a committing trial court judge or the sheriff.³ According to the Department of Financial Services (DFS), bail bonds are generally delivered in paper format.⁴

The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any condition of the bond constitutes a breach by the bail bond agent of this commitment.⁵ A surety may arrest the defendant before forfeiture of a bail bond for the purpose

¹ s. 903.011, F.S.

² s. 903.045, F.S.

³ s. 903.33, F.S.

⁴ Department of Financial Services, Fiscal Analysis of Senate Bill 854, (Feb. 10, 2014). (On file with the Senate Banking and Insurance Committee).

⁵ See id.

of surrendering the defendant to the official who had custody of the defendant when bail was taken or the official into whose custody the defendant would have been placed if committed.⁶

Bail Bond Agents

To act as a bail bond agent or temporary bail bond agent, a person must be qualified, licensed, and appointed under ch. 648, F.S.⁷ A bail bond agent is a limited surety agent or professional bail bond agent.⁸ A limited surety agent is an individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings who receives or is promised money or other things of value.⁹ The appointing insurer is bound by the acts of the bail bond agent acting within the scope of his or her appointment. A bail bond agent may also be a “professional bail bond agent,” which is any person who pledges security for a bail bond in exchange for consideration.¹⁰ The Department of Financial Services (DFS) is responsible for the licensure of bail bond agents.¹¹

A bail bond agent must register in the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides to become a surety of an undertaking.¹² However, the agent is not required to have a physical location in the county. The agent must file a certified copy of his or her appointment by power of attorney from each insurer that he or she represents with such officers. A bail bond agent may also register in any other county. Every insurer that writes bail bonds through bail bond agents must submit and have appointed by the DFS a sample power of attorney, which is the only form of power of attorney the insurer will issue to bail bond agents in the state.¹³ A professional bail bond agent who authorizes a licensed, professional bail bond agent directly employed and appointed by him to sign his or her name to bonds must file a copy of the power of attorney with the sheriff and clerk of the circuit court in the county in which he or she resides and with the department.

Only licensed, appointed bail bond agents may own, control, or have a pecuniary interest in a bail bond agency.¹⁴ A bail bond agency is defined as the offices where a bail bond agent maintains offices and keeps required records or alternatively as an entity that charges a fee or premium to release an accused defendant or detainee from jail, or engages in or employs others to engage in an activity that may be performed only by a licensed, appointed bail bond agent.

Bail bond agents are prohibited from engaging in various actions, some of which are punishable as a third-degree felony.¹⁵ Actions punishable as a third degree felony include paying money to a person who has the power to arrest or hold in custody in order to secure a settlement, compromise remission, or reduction of the bail bond;¹⁶ pay a fee or rebate to an attorney in a bail

⁶ See s. 903.21, F.S., and s. 903.22, F.S.

⁷ s. 648.30, F.S.

⁸ s. 648.25(2), F.S.

⁹ s. 648.25(5), F.S.

¹⁰ s. 648.25(7), F.S.

¹¹ s. 648.26, F.S.

¹² s. 648.42, F.S.

¹³ s. 648.43, F.S.

¹⁴ s. 648.285, F.S.

¹⁵ s. 648.44(1), (2), and (9)(a), F.S.

¹⁶ s. 648.44(1)(e), F.S.

bond matter;¹⁷ make a statement under oath that is false, misleading, or deceptive;¹⁸ and acting as a bail bond agent while being an attorney or law enforcement officer.¹⁹ Other actions are punishable as a first degree misdemeanor,²⁰ such as suggesting to a principal the employment of a particular attorney,²¹ initiating telephone solicitation outside certain hours,²² and attempting to collect payment of a bail bond through threat or coercion in a manner prohibited under s. 559.72, F.S., regarding prohibited consumer debt collection practices.²³

III. Effect of Proposed Changes:

SB 854 states that only a licensed, appointed, and registered bail bond agent may transmit or post an electronic bail bond with attached power of attorney. The bail bond agent may only transmit or post electronic bonds in a judicial circuit if the agent is registered in a county within the circuit and has a bail bond agency within the circuit. Electronic bail bonds will be available if the sheriff for the judicial circuit agrees to accept electronic bonds.

Section 1 amends s. 648.25, F.S., to revise and create definitions of terms used in the statutes authorizes the transmission and posting of electronic bail bonds. The bill defines:

- “Bail bond agency” to include an entity physically located in a judicial circuit that transmits electronic bonds. The bonds may only be transmitted to a jail located in the same judicial circuit as the agency.
- “Delivery” to mean hand delivering or electronically transmitting a bond with an attached power of attorney.
- “Electronic bond” to mean a bond that is transmitted or posted electronically with an attached power of attorney to a jail; that originates through a Florida admitted, authorized surety; and is filed using a computer program.
- “Surety” to mean a property and casualty insurer holding authorized to transact surety business in Florida.
- “Temporary licensee” to mean the same thing as a temporary bail bond agent, which is a person employed by a bail bond agent, agency, insurer, or managing general agent who has the same authority as a licensed bail bond agent, but may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary license must be obtained before a person may obtain licensure as a bail bond agent.

Section 2 amends s. 648.30, F.S., to specify that only a Florida-licensed, appointed, and registered bail bond agent may transmit or post an electronic bond with attached power of attorney.

Section 3 amends s. 648.42, F.S., stating that a qualified, licensed, appointed and registered bail bond agent may transmit or post electronic bonds in the judicial circuit in which the bail bond agency is located if the sheriff agrees to accept electronic bail bonds.

¹⁷ s. 648.44(1)(f), F.S.

¹⁸ s. 648.44(1)(n), F.S.

¹⁹ s. 648.44(2), F.S.

²⁰ s. 648.44(9)(b), F.S.

²¹ s. 648.44(1)(a), F.S.

²² s. 648.44(1)(c), F.S.

²³ s. 648.44(1)(o), F.S.

Section 4 amends s. 648.43, F.S., to require bail bond insurers that write bail bonds through bail bond agents to have a sample electronic power of attorney to be attached to an electronic bond. The sample form must be approved by the DFS. The approved forms are the only forms the insurer may issue to bail bond agents in this state.

Section 5 amends s. 648.44, F.S., to prohibit a bail bond agent or temporary bail bond agent from transmitting or posting an electronic bond with attached power of attorney unless he or she is duly qualified, licensed, appointed, and registered as a bail bond agent; registered in the county within the judicial circuit; and has a bail bond agency physically located in the judicial circuit in which the electronic bond is being transmitted. A violation of this prohibition is punishable as a third degree felony.

The bill eliminates the ability of a bail bond agency to give a power of attorney to countersign his or her name to a licensed bail bond agent employed by the agent giving the power of attorney. The bill also prohibits a bail bond agent from facilitating or allowing an unlicensed or a person without proper appointment to transmit or post an electronic bail bond.

Section 6 amends s. 648.441, F.S., to prohibit an insurer or managing general agent from furnishing an unlicensed individual or entity any form necessary to transmit or post electronic bonds. A violation is punishable as a first degree misdemeanor.

Section 7 amends s. 903.09, F.S., which provides the means by which a bail bond agent may use to justify his or her suretyship. The bill allows the agent to justify suretyship by transmitting or posting electronic bonds from the surety company of the executed power of attorney, if allowed by the sheriff.

Section 8 amends s. 903.101, F.S., which provides that sureties and licensed bail bond agents have equal access to jails for the purpose of making bonds. The bill allows qualified, licensed, appointed, and registered bail bonds agents to transmit or post electronic bonds in the judicial circuit in which the bail bond agency is located if the sheriff agrees to accept electronic bonds.

Section 9 amends s. 903.33, F.S., which specifies that the liability of a surety is not affected by his or her lack of qualifications required by law, any agreement not expressed in the undertakings, or the failure of the defendant to join in the bond. The bill states that an electronic bond is considered an original document and may not be discharged as expressed above.

Section 10 amends s. 903.34, F.S., which currently requires, in criminal actions in any state court, that bonds given by defendants be approved by a committing trial court judge or the sheriff. The bill adds that the bond must:

- Be posted by a qualified, licensed, appointed, and registered bail bond agent pursuant to s. 648.42, F.S., by attaching to the bond a power of attorney issued by a qualified surety insurance company; or
- Be transmitted and posted as an electronic bond as defined in s. 648.25, F.S., by a qualified, licensed, appointed, and registered bail bond agent. The transmittal or posting of the electronic bond must originate through the surety company guaranteeing its undertaking. The surety must electronically transmit the bond and power of attorney on DFS approved forms. The sheriff must agree to accept the transmittal and posting of an electronic bond and

attached power of attorney. The transmittal and posting must originate from a duly qualified, licensed, appointed, and registered bail bond agent whose office and agency is physically located in the county where the bond is to be posted.

Section 11 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 648.25, 648.30, 648.42, 648.43, 648.44, 648.441, 903.09, 903.101, 903.33, 903.34.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
