

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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Senate Bill 820 (Substitute S-1 as passed by the Senate)  
Senate Bill 1264 (as passed by the Senate)  
Sponsor: Senator John D. Cherry, Jr. (Senate Bill 820)  
Senator William Van Regenmorter (Senate Bill 1264)  
Committee: Judiciary

Date Completed: 10-29-98

### RATIONALE

According to an article that appeared in *George* magazine, bounty hunting, or the private tracking and apprehension of fugitives, has its roots in medieval England, and was sanctioned in the United States in 1873, when the U.S. Supreme Court authorized bounty hunters (without a search warrant) to pursue bail jumpers across state lines, make arrests, and break and enter houses in pursuit of fugitives. Apparently, the Supreme Court has never revisited the issue and only four states specifically prohibit bounty hunting. Bail enforcement agents or bail recovery agents, the modern-day equivalent of bounty hunters, evidently are free to operate and pursue fugitives in all other U.S. jurisdictions. According to the National Conference of State Legislatures, six states require licensure and regulation of bail enforcement agents and one other state requires that recovery agents notify a local law enforcement agency if a search is to be conducted with that agency's jurisdiction.

The *George* article reports that there are 2,500 to 5,000 bounty hunters nationwide, the vast majority of them operate in that capacity on a part-time basis, and about 30,000 Americans are expected to be apprehended and jailed by recovery agents in 1998. That amount reportedly would be roughly two times the number of fugitives apprehended by bounty hunters 10 years ago. With more people acting as recovery agents and greater numbers of fugitives being pursued, some people believe that abuses and critical errors are inevitable. They contend that this State should establish a system to license and regulate professional bail enforcement agents and provide criminal penalties for those who violate the licensure and regulatory requirements.

### CONTENT

**Senate Bill 820 (S-1)** would create the "Bail Enforcement Agent Regulation Act" to provide for the licensure and regulation of bail enforcement agents, and require the Department of Consumer and Industry Services to license bail enforcement agents. **Senate Bill 1264** would amend the Code of Criminal Procedure to require an individual or business, that had entered into a recognizance to ensure the appearance of an individual charged with a crime, to comply with the Act proposed by **Senate Bill 820**; require notice to the surety when default was made in any recognizance in a court of record; and require the court to set aside a forfeiture and discharge the bail or surety bond under certain circumstances. The bills are tie-barred.

#### Senate Bill 820 (S-1)

##### "Bail Enforcement Agent"

A "bail enforcement agent" would be an individual who had been contractually retained as an agent by a "surety" or surety agent or who was otherwise authorized to act on behalf of the surety, with or without consideration, for the delivery of a "principal" to the sheriff or other peace officer of any jurisdiction. "Bail enforcement agent" would not include a surety who was a natural person executing a recognizance on his or her own behalf. "Surety" would mean an individual or business entity that had entered into a recognizance to ensure the personal appearance of an individual charged with a crime. A "principal" would be an individual charged with a crime in Michigan or any other state who was the subject of a recognizance issued by a surety for the individual's appearance on that criminal matter.

##### Licensure

The bill would prohibit an individual from acting as, attempting to act as, or representing himself or herself as a bail enforcement agent unless the individual obtained a license from the Department of Consumer and Industry Services (DCIS). An individual seeking licensure would have to apply to the DCIS on a form supplied by the Department and pay an application fee and an annual license fee in an amount determined by the Department. The individual would have to be at least 18 years old and supply a copy of his or her fingerprints that was acceptable to the DCIS.

An applicant also would have to sign an authorization for a criminal history check by the Department of State Police, including FBI records, and pay a fee determined appropriate by that Department to cover the cost of the criminal history check. If applicable, an applicant would have to demonstrate to the DCIS that at least 10 years had passed after all of the following conditions regarding any felony convictions and misdemeanor convictions involving physical injury to another person:

- Payment of all fines, costs, and restitution.
- Serving of all terms of imprisonment.
- Completion of all conditions of probation and parole.

Upon the issuance of a license, the DCIS would have to issue a picture identification card stating the name and any alias of the licensee, the dates of issuance and expiration of the license, and the principal business address of the licensee. For a charge of at least \$10, but not to exceed the cost of issuance, the DCIS would have to issue a new card to a licensee whose card was lost or destroyed. A license would be valid for 12 months from the date of its issuance. The licensee could renew it by filing a renewal application at least 30 days before the expiration date, and paying the annual license fee.

Within 30 days after a change of home or business address, the licensee would have to notify the DCIS in writing of the change. Upon receiving the change, the Department would have to enter the change into its records and send a sticker to the licensee with the corrected information, to be placed on the licensee's identification card.

The bill provides that the Department could issue a license only to a "natural person" (which refers to a human being, though not defined in the bill).

A surety or an individual licensed as a bail enforcement agent in another jurisdiction could act

as an agent in Michigan as long as he or she acted in compliance with the bill's requirements to notify police and possess proper documentation and identification.

#### Agent Requirements/Violations

An individual could act or attempt to act as a bail enforcement agent, "based upon the information and belief of the surety", only under one or more of the following circumstances:

- The individual subject to the recognizance had failed to appear at a required court appearance or had violated a condition of the recognizance.
- The principal had left, was leaving, or was attempting to leave the jurisdiction.
- The sureties submitted by the principal failed.
- The principal or any other person disposed of the property for the apparent purpose of evading the payment to the surety.
- The surety arrested or detained the principal pursuant to the Code of Criminal Procedure as it would be amended by Senate Bill 1264 (MCL 765.26).

A bail enforcement agent would have to notify, by telephone or in person, an appropriate law enforcement agency having jurisdiction over the location in which an apprehension would occur or was planned, no sooner than 24 hours before and at least 30 minutes in advance of a planned attempt to apprehend a principal. This provision would not apply if all of the following circumstances existed: the agent was confronted with an unanticipated opportunity to apprehend a principal that would be seriously jeopardized by the delay inherent in providing advance notice, as long as a reasonable person would conclude that the apprehension could be accomplished without the use of force; it was not foreseeable to a reasonable person that injury to another person or property would occur; and the bail enforcement agent notified the law enforcement agency within 60 minutes after the apprehension.

An agent would have to have in his or her possession documentation demonstrating that he or she had been retained or independently contracted and authorized by a surety to effect the apprehension. Further, an agent would have to possess his or her license issued under the bill or a license issued by another jurisdiction, and at least one other picture identification that was an operator's or chauffeur's license or an official identification issued by Michigan or another

jurisdiction.

A person would be guilty of a felony, and subject to a maximum fine of \$2,000 or up to two years' imprisonment, if he or she were determined by a court of competent jurisdiction to have done any of the following:

- Acted as, or attempted to act as, or represented himself or herself to be a bail enforcement agent without being licensed.
- Knowingly possessed an altered or forged bail enforcement identification card or license, or knowingly altered or forged a card or license.
- In the case of a person not licensed under the bill but licensed by another jurisdiction, failed to notify police or possess proper documentation and identification.

A person who, while licensed, violated any other provision of the bill, would be guilty of a misdemeanor and subject to a maximum fine of \$1,000 or up to one year's imprisonment.

After a notice and an opportunity for a hearing under the Administrative Procedures Act, the DCIS could suspend or revoke an agent's license for a violation of the bill. The bill states that the proposed sanctions and remedies would be independent and cumulative; the use of a remedy or the imposition of a sanction would not bar other lawful remedies and would not limit criminal or civil liability.

### Rules

The DCIS would have to promulgate rules to set fees for license applications, and for an annual license fee. The fees would have to be in an amount determined by the Department to cover actual costs of processing an application and issuing a license.

### Senate Bill 1264

#### Compliance With Regulation Act

The bill provides that in all criminal cases in which a person had entered into any recognizance for the personal appearance of another, and afterward wished to be relieved from the responsibility, he or she could arrest or detain, and deliver the accused to the jail or the county sheriff, in compliance with the proposed Bail Enforcement Agent Regulation Act if subject to the Act.

Currently, under the Code of Criminal Procedure,

if a person wishes to be relieved of the responsibility of having entered into a recognizance for the personal appearance of an accused person in a criminal case, the person may arrest and deliver the accused to the jail or the county sheriff.

#### Default Notice, Forfeiture, and Discharge

Default Notice. Under the Code, if default is made in any recognizance in a court of record, the default must be entered on the record by the court clerk. After entry of the default on the record, the court, upon the motion of the Attorney General, prosecuting attorney, or city attorney, may give 20 days' notice to each surety. The bill would make notification mandatory, rather than permissible, and require that, upon the motion of the Attorney General, prosecuting attorney, or attorney for the local unit of government, the court give each surety immediate notice not to exceed three days from the date of the failure to appear.

Forfeiture and Discharge. Currently, after receiving notice of a default, each surety must be given an opportunity to appear before the court to show cause why judgment should not be entered for the full amount of the recognizance. If good cause is not shown, the court must enter a judgment against the surety on the recognizance for an amount the court determines appropriate, up to the full amount of the recognizance. The bill also would require that the court set aside the forfeiture and discharge the bail or surety bond within one year from the time of a forfeiture judgment if the defendant had been apprehended, the ends of justice had not been thwarted, and the county had been repaid its costs for apprehending the person. If the bond or bail were discharged, the court would have to enter an order to that effect with a statement of the amount to be returned to the surety.

MCL 765.26 & 765.28 (S.B. 1264)

### ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### Supporting Argument

Although bail enforcement agents may not have abused their powers or made glaring errors in Michigan, other states have experienced such incidents. In Arizona, a group of five bail enforcement agents reportedly stormed the wrong house before dawn one morning, beating and binding the homeowner and killing two of her roommates in a gun battle. Similar errors also have been made in other states. According to the

article in *George* magazine, in Missouri, an innocent man was shot; an innocent New Yorker was errantly transported to Alabama; and a Colorado man was held at gunpoint simply because he had the same first name as a dangerous felon being sought by bounty hunters.

In order to avoid, or at least mitigate, the possibility of such abusive practices occurring in Michigan, the State should establish a regulatory structure for bail enforcement agents. Requiring licensure of agents, including a mandatory criminal history check, would go a long way toward ensuring professionalism in the bail enforcement agent business. Agents could operate only under specified circumstances and would have to cooperate with local law enforcement authorities when apprehending an absconder. At least seven states already require licensure and/or police notification, and several others are considering legislation to do so. In order to protect its citizens, Michigan should be among those that establish a regulatory structure and licensure requirements.

**Response:** Senate Bill 820 (S-1) would not go far enough to ensure a suitable standard of professionalism or establish a sufficient regulatory structure. Other than requiring a licensee to be free of criminal sanctions for 10 years and notify local police of a planned apprehension, the bill does not include licensing criteria or requirements regarding the activity of a bail enforcement agent. There are no proposed minimum qualification standards, training or continuing education requirements, or restrictions on agents' tactics or use of equipment. The bill does not address the use of weapons by bail enforcement agents, and would not require any type of liability security, such as a bond, for licensed agents.

#### **Supporting Argument**

Senate Bill 1264 would clarify existing law with regard to forfeiture procedures. Reportedly, different procedures are being used in different courts because of conflicts between statute and court rule. The Michigan Court Rules provide that, if a defendant fails to comply with the conditions of pretrial release, the court must mail notice of any revocation order immediately to the defendant and, if forfeiture of bond has been ordered, to anyone who posted bond (MCR 6.106(1)(2)(a)). The Code of Criminal Procedure, however, merely provides that the court may give 20 days' notice to each surety. Under the bill, the statute would conform with court rules by requiring immediate notification to sureties of a defendant's failure to appear.

#### **Supporting Argument**

Senate Bill 1264 would encourage the apprehension and return of a bail absconder, because it would expand a surety's opportunity to have all or part of a forfeited amount discharged and returned to the surety. Currently, court rules provide that, if a defendant does not surrender to the court within 28 days after revocation of bail, the court may enter judgment against the defendant, and anyone who posted bond, for the entire amount of the bond and court costs. The bill, however, would provide a greater financial incentive for a surety to pursue a defendant's apprehension and return, as the surety could recoup part or all of the forfeited amount for up to one year.

#### **Opposing Argument**

Government intrusion upon a profession in the form of licensure and regulatory requirements should be limited to situations in which the public health, safety, or welfare would be harmed without regulation of that profession. Bail enforcement agents should not be regulated by the State unless that need can be demonstrated.

#### **Opposing Argument**

Senate Bill 820 (S-1) should include an exception to the requirement that local police be notified when a bail enforcement agent was about to apprehend an absconder. According to testimony before the Senate Judiciary Committee, there sometimes are occasions when the person being sought has friends or relatives on the local police force, so notification could thwart the apprehension of the bail absconder.

Legislative Analyst: P. Affholter

#### **FISCAL IMPACT**

##### **Senate Bill 820 (S-1)**

This bill would require the Department of Consumer and Industry Services to license private bail enforcement agents. According to the Department, the estimated startup costs for this new licensing program would be about \$100,000. The bill would allow the Department to establish issuance and renewal fees, which then would be used to offset the costs of administering this program.

**Senate Bill 1264**

The bill would have no impact on the State and an indeterminate impact on local units of government in regard to the amount of funds that would be returned to sureties.

Fiscal Analyst: M. Tyszkiewicz  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.