

Senate Fiscal Agency  
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**SFA**

BILL ANALYSIS

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Senate Bills 820 and 821 (as introduced 12-2-97)  
Sponsor: Senator John D. Cherry, Jr. (Senate Bill 820)  
Senator William Van Regenmorter (Senate Bill 821)  
Committee: Judiciary

Date Completed: 9-15-98

## **CONTENT**

**Senate Bill 820** would create the “Bail Recovery Agent Regulation Act” to provide for the licensure and regulation of bail recovery agents, and require the Department of State Police to license bail recovery agents. **Senate Bill 821** 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**. The bills are tie-barred. Senate Bill 820 includes an effective date of January 1, 1998

### **Senate Bill 820**

#### **“Bail Recovery Agent”**

A “bail recovery agent” would be an individual who had been contractually retained as an agent by a “surety” or who was otherwise authorized to act on behalf of the surety, with or without consideration, for the delivery of an “absconder” to the sheriff or other peace officer of the jurisdiction in which a recognizance was entered into for commitment. “Bail recovery 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. An “absconder” 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 recovery agent” unless the individual obtained a license from the Department of State Police. An individual seeking licensure would have to apply to the Department 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; show proof of the issuance of a bond as required in the bill; and supply a copy of his or her fingerprints that was acceptable to the Department.

Upon the issuance of a license, the Department would have to issue a picture identification card stating the name and any alias of the licensee, the date of issuance and expiration date of the license, the name of the entity issuing the bond, and the home address and any business address of the licensee. For a charge of at least \$10, but not to exceed the cost of issuance, the Department 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.

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).

### Bonding

A bail recovery agent would have to provide proof of the issuance of a bond, for at least \$100,000, for any damage to innocent parties that could occur in the agent’s bail recovery activities. The bond would have to be issued by a company that was licensed to do business in Michigan; the bond would have to provide that written notice of any cancellation of coverage would be sent to the Department within 10 business days. Within 30 days after a change of home or business address or identity of the bonding company, the licensee would have to notify the Department 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.

### Agent Requirements/Violations

An individual could act or attempt to act as a bail recovery agent, “based upon the information and belief of the principal”, only under one or more of the following circumstances:

- The individual subject to the recognizance had failed to appear at a scheduled trial or hearing.
- The absconder had left, was leaving, or was attempting to leave the jurisdiction.
- The sureties submitted by the absconder failed.
- The absconder or any other person disposed of the property for the apparent purpose of evading the payment to the principal.

The bill would require a bail recovery agent to notify, by telephone or electronic mail, an appropriate law enforcement agency or the State Police post nearest the locality in which an apprehension was planned, at least 30 minutes in advance of an attempt to apprehend an absconder. This provision would not apply if an agent were confronted with an unanticipated opportunity to apprehend an absconder that would be seriously jeopardized by the delay inherent in providing advance notice, so long as the apprehension could be accomplished without the use of force against person or property and the bail recovery 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 authorized by a surety to execute a recognizance. Further, an agent would have to possess his or her license issued under the bill, and at least one other picture identification that was an operator’s or chauffeur’s license or an official identification issued by Michigan or any other state.

If a court determined that a person had violated these provisions, he or she would be responsible for a State civil infraction, subject to a fine of up to \$1,000. In addition, that penalty would apply if a court determined that a person acted as, attempted to act as, or represented himself or herself as an agent without being licensed, or knowingly possessed an altered or forged bail recovery identification card or license or altered or forged a card or license.

After a notice and an opportunity for a hearing under the Administrative Procedures Act, the Department could suspend or revoke an agent’s license upon receiving a State civil infraction determination for a violation. The bill states that the sanctions and remedies under the bill 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 Department 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 821**

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 Recovery 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.

MCL 765.26 (S.B. 821)

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

### **Senate Bill 820**

The bill would have an indeterminate fiscal impact on the State. The bill would require the Department of State Police to license bail recovery agents. Since Michigan is a state with a taxpayer-funded bail system, relatively few private bail recovery agents exist in this State, perhaps as few as 50 or less. The State would incur the costs of administering these licenses, which could be accomplished either by the hiring of an additional staff person or through existing resources. The bill specifies that the license fees for agents would have to be in an amount to cover actual State costs of processing an application and issuing a license.

### **Senate Bill 821**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Baker

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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.