
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2043 **Hearing Date:** June 28, 2022
Author: Jones-Sawyer
Version: June 13, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Bail bonds*

HISTORY

Source: California Department of Insurance

Prior Legislation: AB 2029 (Ammiano), Ch. 747, Stats. of 2012
AB 379 (Hagman, 2011), not heard in Assembly Public Safety
AB 2238 (Spitzer), Ch. 166, Stats. of 2004
AB 243 (Wildman), Ch. 426, Stats. of 1999

Support: California Public Defenders Association; Consumer Attorneys of California;
Lawyer's Committee for Civil Rights of the San Francisco Bay Area

Opposition: American Bail Coalition

Assembly Floor Vote: 56 - 8

PURPOSE

The purpose of this bill is to require the licensing of bail fugitive recovery agents and establish various requirements related thereto.

Existing law 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. (Pen. Code, § 1299.01, subd. (d).)

Existing law 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 specified conditions, including acting as a bail fugitive recovery agent, as defined. (Pen. Code, § 1299.02, subd. (d).)

Existing law provides that a bail fugitive recovery person, a bail agent, bail permittee, or a bail solicitor who contracts their services to another bail agent or surety as a bail fugitive recovery person and who engages in the arrest of the defendant shall comply with the following requirements:

- The person shall be at least 18 years of age;
- The person shall have completed a 40-hour power of arrest course certified by POST;
- The person shall have completed a minimum of 20 hours of classroom pre-licensing education, as specified; and,
- The person shall not have been convicted of a felony. (Pen. Code § 1299.04, subd. (a)(1)-(4).)

Existing law provides that an insurer shall not execute an undertaking of bail except by and through a person holding a bail license issued pursuant to existing law, and that a person shall not engage in specified actions related to undertakings of bail or bail bonds unless as provided by existing law. (Ins. Code §1800 subd. (a).)

Existing law provides that bail licenses include bail agents' licenses, bail permittees' licenses, and bail solicitors' licenses. (Ins. Code, § 1801, subd. (a)-(c).)

Existing law provides that a bail agent's license permits the licensee to solicit, negotiate, and effect undertaking of bail on behalf of any surety insurer while there is in effect an unrevoked notice of appointment of such insurer, and that such license shall not be issued unless the applicant files a \$1,000 surety bond. (Ins. Code §1802.)

Existing law requires every applicant for a bail agent's license to file with the commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing that applicant to execute undertakings of bail and to solicit and negotiate those undertakings on its behalf. (Ins. Code, § 1802.1.)

Existing law provides that appointments continue to remain in force until termination of the bail agent's license, the end of the license term, or the filing of a notice of termination by the insurer, its representative, or by the bail agent. (Ins. Code, § 1802.1, subds. (a)-(c).)

Existing law provides that, in order to be eligible to take an examination for a bail license, the applicant must complete a minimum of 20 hours of classroom education in subjects pertinent to the duties of a bail licensee, including, but not limited to, all related laws and regulations, rights of the accused, ethics, and apprehension of bail fugitives. (Ins. Code, § 1810.7, subd. (a).)

Existing law provides that a bail licensee must complete in each two-year license term not less than 12 hours of continuing education, as specified, prior to renewal of their license. (Ins. Code, § 1810.7, subd. (a).)

Existing law requires the Insurance Commissioner to approve or disapprove an applicant for licensure within 90 days of receipt of the applicant's full and complete application, and that failure to disapprove an applicant within this period shall result in automatic approval. This provision also provides that an approval is valid for two years, and that the Commissioner, at any time, may disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking in integrity, honesty or competency. (Ins. Code, § 1810.7, subd. (b).)

Existing law authorizes the commissioner to issue a temporary license to the executor or administrator of the estate of a deceased holder of a bail agent's license or bail permittee's license, permitting such party to act as such representative to exercise the rights and privileges of such a license holder for the purpose of conducting the business of the estate for a period of one year from and after the date of the death, pending, but not after, the disposal of the business. (Ins. Code, § 1810.8.)

Existing law establishes various fees related to the filing of an application for, or renewal of, bail licenses. (Ins. Code, § 1811, subds. (a)-(l).)

Existing law requires the Insurance Commissioner to publish and maintain a list of names of holders of bail agents' licenses, bail permittees' licenses, and bail solicitors' licenses on the Insurance Department's public website, together with their license numbers and any other appropriate information. (Ins. Code, § 1815.)

This bill 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.

This bill provides that any person or entity that hires, contracts, solicits or appoints another person to act as a bail fugitive recovery agency shall ensure that the person is duly licensed by the Department of Insurance.

This bill adds "bail fugitive recovery agent licenses to the list of "bail licenses."

This bill requires a bail fugitive recovery agent to file the following with the Insurance Commissioner:

- A surety bond in the amount of \$1,000, which shall allow persons to recover for injuries, loss, or damage resulting from the willful or wrongful acts or omissions of the licensee, and protects the state from judgements against the licensee.
- A liability insurance policy that provides minimum limits of insurance of \$1,000,000 for any one loss or occurrence due to either bodily injury or death, or property damage, or both.

This bill provides that bail agents, permittees, and solicitors who apply for a bail fugitive recovery agent license are exempt from filing the above items with the Insurance Commissioner if they have a current surety bond and liability insurance policy on file.

This bill provides that every applicant for a bail fugitive recovery agent license shall file with the Insurance Commissioner a notice of appointment executed by a surety insurer authorizing the applicant to act on behalf, and pursuant to, the instructions of the appointing license holder.

This bill provides that additional notices of appointment may be filed by other surety insurers upon the payment for each additional notice of specified fees before the license is issued and, thereafter, as long as the license remains in force.

This bill provides that bail fugitive recovery agents' appointment shall continue in force until the termination of the license, the end of the license term if specified fees are not paid, or the filing of a notice of termination by the surety insurer or the agent.

This bill provides that bail agents and bail permittees who apply for a bail fugitive recovery agent license are exempt from filing a notice of appointment if the bail agent or bail permittee has one or more surety appointments on file with the commissioner and the surety or sureties providing the appointments have authorized the bail agent or bail permittee to work under their authority as a bail fugitive recovery agent.

This bill provides that nonadmitted surety insurers shall comply with the notice of appointment requirement when appointing California-licensed bail fugitive recovery agents to investigate, surveil, locate, and arrest bail fugitives who are in California but are wanted in a jurisdiction outside California.

This bill provides that a bail fugitive recovery agent's license permits the licensee to engage in the activities of a bail fugitive recovery agent, as specified.

This bill requires a bail fugitive recovery agent licensee to comply with the Bail Fugitive Recovery Persons Act.

This bill provides that only natural persons may be licensed as bail fugitive recovery agent.

This bill requires a bail fugitive recovery agent to disclose on their license application and renewal to the Department of Insurance whether they are also a bail agent, permittee, or solicitor, and to carry an identification card issued by the Insurance Commissioner.

This bill provides that all bail licensees shall not have been convicted of a felony unless the person is licensed, as specified.

This bill requires applicants to complete a 40-hour power of arrest course certified by the Commission on Peace Officer Standards and Training (POST), and provides that the completion of this course shall be for educational purposes only and not intended to confer upon the applicant or licensee the power of arrest of a peace officer.

This bill specifies that the 40-hour course requirement applies to both prospective bail fugitive recovery agents or to bail agents who hire, train, or designate assignments for bail fugitive recovery agents.

This bill increases various existing fees relating to the filing of applications and renewals:

- From \$283 to \$311 per year for filing an application or request for bail agent's license.
- From \$283 to \$311 per year for filing an application or request for a bail solicitor's license.
- From \$567 to \$624 for filing an application or request for bail permittee's license.
- From \$56 to \$62 for filing an application for examination or reexamination.

- From \$85 to \$94 per year for a renewal application, as specified for bail agents with more than one valid notice of appointment on file.
- From \$85 to \$94 per year for a bail solicitor's renewal application.
- From \$358 to \$394 per year for a bail permittee's renewal application.
- From \$29 to \$32 for filing an application or request for approval of a true or fictitious name, as specified, except that there shall be no fee when the name is contained in an original application.
- From \$25 to \$28 for filing a bond, as specified, except when the bond constitutes part of an original application.
- From \$14 to \$15 for filing a first amendment to an application.
- From \$29 to \$32 for filing a second and each subsequent amendment to an application.

This bill establishes a fee of \$311 per year for filing an application or request for a bail fugitive recovery agent's license, and \$94 per year for a renewal application.

This bill requires the Insurance Commissioner 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.

This bill defines a "bail fugitive recovery agent" as a person licensed pursuant to existing law who is provided written authorization 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.

This bill 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 is one of the following:

- A bail, as defined, who is also a bail fugitive recovery agent;
- A bail fugitive recovery agent; or
- A licensed private investigator, as specified, who is also a bail fugitive recovery agent.

This bill provides that the Bail Fugitive Recovery Act, which includes the prohibition above, does not apply to a citizen's arrest, as specified, provided that no consideration is paid or allowed to any person effecting an arrest.

This bill prohibits a person who holds a bail license issued by another state from apprehending, detaining or arresting bail fugitives in California.

This bill provides that a bail fugitive recovery agent, a bail agent, bail permittee, or bail solicitor who contracts their services to another bail agent or surety as a bail fugitive recovery agent, as specified, and any bail agent, bail permittee, or bail solicitor who engage in in the arrest of a defendant, as specified, must comply with bail licensing requirements and any regulations promulgated by the Insurance Commissioner

This bill authorizes the Insurance Commissioner to issue a temporary license to the executor or administrator of the estate of a deceased holder of a bail fugitive recovery agent's license, permitting such party to act as such representative to exercise the rights and privileges of such a license holder for the purpose of conducting the business of the estate for a period of one year from and after the date of the death, pending, but not after, the disposal of the business.

This bill specifies that its provisions, except for specified fee increases, are operative on July 1, 2023.

COMMENTS

1. Need for This Bill

According to the Author:

In California, a bail fugitive recovery agent (BFRA), colloquially known as a bounty hunter, 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 California Department of Insurance's (CDI) 20-hour educational course. For an occupation that does not require a warrant to apprehend and surrender individuals to court, enhanced standards are crucial.

Current state law lacks the oversight and accountability necessary to regulate BFRAs as no entity is responsible for enforcing existing requirements. As a result, there is no motivation from surety insurers and bail bond companies to provide in-house supervision of the BRFAs they hire, and there is little recourse for the public who are harmed. Since BFRAs are associated with bail bond transactions, and consumer complaints and investigative cases can involve BFRAs, CDI has become the de facto watchdog despite the lack of resources and the fact that CDI does not license them. [...]

AB 2043 not only intends to align California with 18 other states in licensing bail fugitive recovery agents (BFRAs), but also seeks to ensure commonsense regulations, similar to those of private investigators and security guards, of an occupation that has been left without oversight. In doing so, AB 2043 increases oversight and professionalism in the bail/bond industry by requiring BFRAs to pass finger-based background checks; enhancing education and training of licensee applicants; tightening industry supervision of BFRAs; improving oversight by providing CDI proper identification of who is operating in the state; and, providing an accurate size and scope of the industry. Overall, this legislation does not seek to eliminate a sector of the industry, but rather ensure the most comprehensive, streamlined licensing process.

2. Bounty Hunters in California

Bail fugitive recovery persons, also known as bounty hunters, earn their living by tracking and apprehending individuals charged with a crime and out on bail who have failed to appear in court, also known as ‘bail fugitives.’ Bail agents licensed through the California Department of Insurance often act as bounty hunters, but many bounty hunters are merely unlicensed individuals hired by a bail agent or company to recover bail fugitives on the licensee’s behalf. Although California has regulated the bail bond industry since 1937, it was not until 1999 that the state began meaningfully regulating bounty hunters, via AB 243 (Wildman, Ch. 426, Stats. of 1999), which enacted the Bail Fugitive Recovery Person’s Act (the Act).¹ In addition to granting various powers related to the apprehension of bail fugitives, the Act required bounty hunters to meet certain minimum standards, but unlike other bail industry actors, did not require licensing.²

Since the Act’s passage, bounty hunters have come under regular scrutiny and criticism for behaving in unethical, and sometimes unlawful, ways. As the sponsor of this bill, the Insurance Commissioner writes, “To my knowledge, recent allegations involving bail fugitive recovery persons include burglary, robbery, homicide, theft, coercion, misrepresentation, kidnapping, extortion, and hiring convicted felons.” In 2015, for instance, 31 bail agents operating in the Bay Area, many of whom were acting as bounty hunters, were arrested and charged with numerous felonies for illegal business practices – one was even charged for a misdemeanor violation of the Act.³ More recently, in Palm Springs, a convicted felon working as a bounty hunter shot and killed David Spann, a man with no active arrest warrants and no record of bail revocation.⁴

According to the Insurance Commissioner:

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.

In response to these and similar incidents in the past, regulators and reformers have called for licensing bounty hunters. In 2018, the California Department of Insurance (CDI) issued a report recommending ways to improve oversight and regulation of the bail industry, specifically calling for a licensing requirement. According to the report:

Of the forty-two states that allow bounty hunting, there are twenty-one that require a bounty hunter license. 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

¹ Codified at Penal Code §§1299 et. seq.

² The Act had a sunset date of 2010, and was inoperative from that time until 2012, when the Act was re-established by AB 2029 (Ammiano, Ch. 747, Stats. of 2012).

³ <http://www.insurance.ca.gov/0400-news/0100-press-releases/archives/release083-15.cfm>

⁴ <https://www.mercurynews.com/2021/04/28/california-man-killed-in-his-home-at-2-a-m-by-unlicensed-bail-agent-police-say/>

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.⁵

3. Effect of This Bill

Existing law, as discussed above, imposes various minimum standards on bounty hunters, including that they comply with limited education, notice and conduct requirements. Specifically, bounty hunters must be at least 18 years of age, complete specified coursework, and not have any felony convictions, although no background check is required.⁶ Additionally, bounty hunters may not represent themselves as being law enforcement officers, and must notify local law enforcement no more than 6 hours before attempting to apprehend a bail fugitive.⁷ Under this framework, which does not require bounty hunters to be licensed, there is ample room for evading compliance, as CDI does not determine whether the minimum requirements are met before a bounty hunter becomes active. Enforcement generally occurs only after CDI has received a complaint about a specific bounty hunter.

This bill requires the licensure of bounty hunters by including them in the existing statutory scheme regulating other bail licensees, such as bail agents, permittees and solicitors. Specifically, this bill provides that an applicant for a license must pass a licensing exam and file several items with CDI, including a surety bond, a policy of liability insurance, and a notice of appointment by a surety insurer. In order to be eligible to take the required licensing examination, the applicant must have completed 20 hours of classroom education on the duties and responsibilities of a bail licensee as well as a 40-hour, POST-certified course on the powers of arrest. In addition, in every 2-year licensing period, the licensee must complete 12 hours of continuing education. The licensing process also includes a background check, which, coupled with the prerequisite training courses, is likely to reduce the likelihood of bad actors in the bounty hunting field and improve overall compliance with the Act. The bill also conforms the relevant sections of the Act to the changes it enacts in the Insurance Code's licensing provisions. For more detail on the licensing structure and related requirements imposed by the bill, see the analysis prepared by the Senate Committee on Insurance.

4. Sufficient Training Requirements?

California underwent an overhaul on the issue of uses of force, and standards for deadly force in 2019 with the passage of AB 392 (Weber), Ch. 170, Stats. of 2019 and SB 230 (Caballero), Ch 285, Stats. of 2019. These bills updated California's use of force statutes, and the mandated training of law enforcement in the updated standards. A related update for licensed private security guards was passed last year, via AB 229 (Holden), Ch. 697, Stats. of 2021, which, among other changes, added a course of training in the use of force to existing training requirements for specified classes of security guards. Similarly, because bounty hunters are involved in the apprehension of bail fugitives, and regularly encounter situations involving the application of force, an understanding of the appropriate use of force and related topics may be

⁵ California Department of Insurance, *Recommendations for California's Bail System* (Feb. 2018) <<http://www.insurance.ca.gov/01-consumers/170-bail-bonds/upload/CDI-Bail-Report-Draft-2-8-18.pdf>>

⁶ Penal Code §1299.04

⁷ Penal Code §1299.08

valuable. The Author and Committee may wish to consider adding use of force training to the required training for licensed bounty hunters.

5. Argument in Support

According to the Consumer Attorneys of California:

A bail fugitive recovery person's (BFRP) strong financial incentive to make arrests, often without warrants, combined with their ability to self-regulate fails to protect the public from a job that simulates law enforcement and subjects the public to dangerous and traumatic situations. Unfortunately, current law on BFRPs is limited to unenforceable education, notice, and conduct requirements, which lacks the oversight and accountability necessary to regulate them. The surety insurers and bail bond companies who hire BFRPs lack motivation to provide in-house supervision, and there is little recourse for those who are harmed. Since no entity is charged with enforcement and BFRPs are associated with bail bond transactions, the California Department of Insurance (CDI) has become their de facto watchdog despite the fact that BFRPs are not licensed and do not pay any fees to CDI.

By requiring BFRPs to become licensed, AB 2043 will increase professionalism by ensuring applicants pass finger-based background checks; enhance education and training of licensee applicants; tighten industry supervision of BFRPs; improve oversight by providing CDI proper identification to relay to law enforcement, the courts, and the public; and provide an accurate scope of the industry.

6. Argument in Opposition

According to the American Bail Coalition:

This is important legislation that we believe is very close to the finish line, but there is a glitch in this legislation that must be addressed. If it cannot be addressed, we simply cannot support this legislation.

Our concern with AB 2043, section 7 of the legislation, which can be addressed with a very simple amendment, is the appointment requirements of the bail recovery agents. Unfortunately, the latest house amended version makes this problem worse, creating an exemption by operation of law for bail bonds not underwritten by surety insurers for out of state bail jumpers seeking refuge in California. Many states in the south and southwestern part of the United States, for example, permit bail bonds to be underwritten by cash or property agents that have no connection to a surety insurer.

AB 2043 requires surety insurers, however, to appoint bail recovery agents in all cases. In perhaps 99% of all recovery operations, it is licensed bail agents in California who are the actual entities that are recovering fugitives or signing a contract with a bail recovery agent. Thus, we believe the appointment process should represent the actual agency relationship, since the role of the surety corporation is to underwrite bonds not conduct recovery operations. Only in rare cases when an agent passes away, or is incapacitated or otherwise cannot perform a recovery does a surety directly contract with a bail recovery agent. In those instances, the surety insurer can file the appointment. In other words, we ask for a simple amendment requiring the

entity that appoints a licensed bail recovery agent, in most cases the licensed California Bail Agent, to file the appointment with the Department of Insurance.

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