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COURT OF APPEALS
DIVISION II

10 APR 30 PM 5:00

STATE OF WASHINGTON

BY *ks*
DEPUTY

No. 38744-1-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

LARRY STOUT,
Appellant

v.

CARL J WARREN AND JANE DOE WARREN, *et al.*,
Respondents

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. BAIL/FUGITIVE RECOVERY IS AN INHERENTLY DANGEROUS OCCUPATION

i. In 2002, bail/fugitive recovery could not be "made safe."

The Respondents argue that Washington courts have been reluctant to find that any activity is inherently dangerous. Resp. Br. at 12. They cite authority that holds several dangerous activities/occupations are not inherently dangerous, including the use of explosives, work with high voltage power lines and dumping substances into a large hole that subsequently spontaneously combust, etc. See *Tauscher v. Puget Sound Power and Light Co.*, 96 Wn.2d 274, 276, 635 P.2d 426 (1981); *Kendall v. Johnson*, 51 Wash. 477, 99 P. 310 (1909); *Hickle v. Whitney Farms, Inc.*, 107 Wn. App. 934, 941, 29 P.3d 50 (2001); *Humphreys v. Texas Power & Light Co.*, 427 S.W.2d 324, 330 Tex.Civ.App. 1968).

Bail recovery is easily distinguished from these activities. As argued by Respondents, a dangerous activity is inherently dangerous when it can never be made safe. *Hickle*, 107 Wn. App. at 941. Such was the case with regard to bail recovery at the time of Larry Stout's encounter with Carl Warren in 2002. An essential requirement for making such an

activity safe is the ability to control the surroundings within which the activity is carried out.

Persons working with explosives, high voltage power lines or those who work in and around excavated areas do have the ability to control their work surroundings, the persons allowed within the work area, and the use of any materials involved (such as explosives). Excavated areas can be barricaded and clearly marked, guarding against any risk of harm to third parties. This control over the work surroundings keeps these dangerous activities safe.

Bail recovery agents had no ability to exert any such control in 2002. Despite the subsequent enactment of licensure requirements, they still do not. Bail recovery agents often apprehend fugitives in public areas in close proximity to innocent third party bystanders. They often have no way of knowing if any third parties may be present with a fugitive during an attempted apprehension, even if conducted in a "private" area. Bail recovery agents have been well-known to attempt to apprehend a fugitive at an incorrect address. Bail recovery agents have no way of knowing whether the fugitive or third parties are under the influence of alcohol or drugs, or whether they are mentally impaired. Most importantly, they have no way of knowing whether the fugitive or third parties are armed with deadly weapons. Therefore, a bail recovery agent has no means

whatsoever to ensure that the surroundings in which an apprehension is to take place will remain safe for the bail recovery agent, the fugitive and any third parties. Therefore, bail/fugitive recovery was inherently dangerous at the time of this occurrence, and it remains inherently dangerous.

ii. **2004 legislation regarding bail recovery was enacted specifically to protect the public/third parties.**

RCW 18.185.300, referred to by Respondents, was enacted in 2004, after the accident at issue. See Laws of 2004, ch. 186, § 12 (effective June 10, 2004) (planned forced entry provision).¹ This first section of the Session Law indicates that safety was a central reason for enacting “planned forced entry” protocols.

The legislature also recognizes that locating, apprehending, and surrendering fugitives requires special skills and expertise; that bail bond agents and bail bond recovery agents are often required to perform their duties under stressful and demanding conditions; and that it serves the public interest to have qualified people performing such essential functions. Therefore, bail bond agencies that use the services of bail bond recovery agents must, **in the interest of public safety**, use bail bond recovery agents who possess the knowledge and competence necessary for the job.

Laws of 2004, ch. 186, § 1 (effective June 10, 2004) (emphasis added).

¹ A complete copy of this Session Law is appended to this brief.

Thus, the legislature was clearly concerned about the potential risk of grave injury to third parties when it enacted the entire statutory scheme requiring licensure of bail recovery agents.

It appears that despite enacting the requirement for licensure of bail recovery agents in 2004, the legislature remains concerned for public safety with regard to bail/fugitive recovery. Our 2010 legislature appointed a Bail Practices and Procedures Work Group, a panel of experts tasked with studying bail practices and procedures. They are to study the bail system, **specifically including public safety**. See Laws of 2010, ch. 256, § 1 (Effective June 10, 2010). A complete copy of this Session Law appended to this brief.²

B. RESTATEMENT

i. Reliance on the Restatement (Second) of Torts is proper.

² Other states have enacted legislation for the purpose of preserving the safety of the public. For example, Delaware's statutes regarding bail enforcement agents were enacted for the following purpose:

The Delaware General Assembly declares that it is in the best interest of the citizens of Delaware to require licensure of bail enforcement agents and their agents and employees **to prevent unqualified individuals from endangering the public**. Therefore, the purpose of this chapter is to promote, preserve and protect the public health, **safety** and welfare by regulating fugitive recovery. This chapter shall be liberally construed to accomplish this purpose.

Del. Code. Ann. tit. 24, § 5501.

In addition, in 2001, Alabama amended its statutes to prohibit bail recovery agents from apprehending any defendant within 100 feet of the property on which any child care facility or public, private or church school is located. Ala. Code §15-13-62(b) (2001).

The factors enumerated in the Restatement (Second) of Torts § 520 are applicable here. There is a very high degree of risk of irreparable injury to the bail recovery agent, the fugitive, any nearby third party and property during apprehension of a fugitive. Mr. Stout's injury is clear evidence that supports this factor. News reports are replete with accounts of homes being damaged by bail recovery agents breaking in unannounced and innocent bystanders being apprehended and/or seriously injured collaterally or by mistake.

Mr. Stout himself is evidence that resulting harm can be very grave. He has been incapacitated since the accident; he has lost one leg, and has faced the loss of his other leg several times.

It is impossible for a bail recovery agent to completely eliminate risk of any harm because, as stated above, the bail recovery agent has no way of being guaranteed ahead of time that the fugitive will not be impaired either chemically or by virtue of mental defect, armed with a deadly weapon, or accompanied by a third party who is impaired either chemically or by virtue of mental defect, or armed with a deadly weapon.

The uncommon, unorthodox practices of bail recovery agents such as Carl Warren were entirely without justification in this case. Such actions were of no value to the community. There is no evidence that

Warren attempted less dangerous means to apprehend Mr. Stout, although less dangerous means were available.

The witnesses in this case did testify that such activities are very dangerous. One instance of recklessness, such as this, is one instance too many, and puts the public at severe risk of grave harm. This is precisely why the legislature elected to regulate bail recovery agents, and this is precisely why the legislature chose, just this year, to appoint a task force to further investigate the practices of bail recovery agents.

Bail recovery can be performed safely. But it is not always performed safely. A jury should be allowed to determine what happened in this instance.

CONCLUSION

As stated previously, C.J. Johnson Bail Bond Company subcontracted with Mike Golden of CSSR Recovery Services to apprehend Larry Stout. In turn, Mike Golden of CCSR Recovery Services enlisted the help of Carl Warren to apprehend Larry Stout.

C.J. Johnson Bail Bond Company believes that bail bond recovery work can be performed safely, the declarations filed in the trial court record, including that of Louise Workman, as well as the case law and secondary authorities clearly indicate that fugitive recovery is an activity that involves risk, and especially risk to innocent third parties, and

although such risks may be minimized by following certain procedures, such risk simply can never be eliminated. The uncertainty of the situation including the uncertainty of innocent third parties who are often present creates a high degree of risk of harm to others, not to mention harm to the individual being apprehended. There is always the risk that the person being apprehended is the wrong person.

The trial court record and case law cited previously further indicate that the harm that can result from a fugitive recovery gone wrong can be irreversible. People have been killed during bail bond recovery. Larry Stout has been permanently disabled as a direct result of a bail recovery agent who acted too recklessly.

No matter how much reasonable care is used with regard to fugitive recovery it is impossible to totally eliminate the risk of harm including significant harm to person and property.

Like police work, fugitive recovery by bail bond agents is an inherently dangerous activity.

The trial court erred by concluding that there was no genuine issue as to any material fact as well as by concluding that defendant CJ Johnson Bail Bonds was entitled to judgment as a matter of law. An issue such as this should be determined by a jury.

DATED the 30th day of April, 2010.

RESPECTFULLY SUBMITTED,



Robert Helland, WSBA # 9559
Attorney for Appellant.

Declaration of Transmittal

Under penalty of perjury under the laws of the State of Washington
I affirm the following to be true:

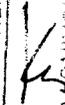
On this date I transmitted the original document to the Washington
State Court of Appeals, Division II by personal service, and delivered a
copy of this document via ABC LMI to the following:

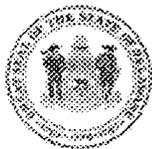
Wayne Fricke
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Suite 302
Tacoma, WA 98405

Signed at Tacoma, Washington on this 30th day of April, 2010.



Lisa Bitz

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[§ 5501](#) [§ 5502](#) [§ 5503](#) [§ 5504](#) [§ 5505](#)

TITLE 24

Professions and Occupations

CHAPTER 55. BAIL ENFORCEMENT AGENTS

§ 5501. Purpose.

The Delaware General Assembly declares that it is in the best interest of the citizens of Delaware to require licensure of bail enforcement agents and their agents and employees to prevent unqualified individuals from endangering the public. Therefore, the purpose of this chapter is to promote, preserve and protect the public health, safety and welfare by regulating fugitive recovery. This chapter shall be liberally construed to accomplish this purpose.

73 Del. Laws, c. 194, § 1.;

§ 5502. Definitions.

"Bail enforcement agent," as used within this chapter, shall mean any person or cooperative of persons, resident or nonresident, whose services or actions are performed for the purpose of capturing a fugitive, and including, but not limited to, any person who engages in the apprehension and return of persons who are released on bail and who have failed to appear at any stage of the proceedings to answer the charge before any state or federal court.

73 Del. Laws, c. 194, § 1; 76 Del. Laws, c. 398, § 2.;

§ 5503. Prohibited conduct.

No person, other than a "law-enforcement officer" as defined by § 222 of Title 11 or an employee of any state court acting at the direction of any judge, commissioner or master of any state court, shall apprehend, detain or arrest a suspected fugitive on behalf of another person, including a principal on a bond, wherever issued, unless that person is licensed by the Secretary of the Department of Safety and Homeland Security.

73 Del. Laws, c. 194, § 1; 74 Del. Laws, c. 110, § 138.;

§ 5504. Licensing.

(a) The Secretary of the Department of Safety and Homeland Security is hereby authorized and directed to promulgate regulations in accordance with Chapter 101 of Title 29 as are necessary to implement the provisions of this chapter regarding the licensure and

registration of bail enforcement agents, which may include the term of a license or registration, reciprocity and the qualifications of a licensee, and may charge a fee not to exceed \$500 for each application for licensure and each renewal of an existing license.

(b) The Department of Safety and Homeland Security shall, by its rules and regulations, determine all fees to be assessed under this chapter, including application and renewal fees not to exceed the maximum fee permitted in subsection (a) of this section. Each fee collected shall be deposited into the Bail Enforcement Regulatory Fund, which fund shall be a revolving fund and moneys into the fund shall not revert to the State General Fund. The Department shall use the fund to defray all expenses incurred in its administration of this chapter, including, but not limited to, background investigations, criminal history investigations and fingerprinting of an applicant and any investigation of any charge made against a licensee.

(c) No person shall be issued a license pursuant to this chapter unless that person submits their name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and such other information as may be necessary to obtain a report of the applicant's entire criminal history record from the State Bureau of Identification and a report of the applicants entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544.

73 Del. Laws, c. 194, § 1; 74 Del. Laws, c. 110, § 138; 76 Del. Laws, c. 398, § 3.;

§ 5505. Penalties.

Any person who violates this chapter shall be guilty of a class F felony.

73 Del. Laws, c. 194, § 1.;

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CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6673

61st Legislature
2010 Regular Session

Passed by the Senate March 8, 2010
YEAS 47 NAYS 0

President of the Senate

Passed by the House March 5, 2010
YEAS 97 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6673** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6673

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, McCaslin, Carrell, Kohl-Welles, Gordon, Regala, Roach, Hargrove, and Tom)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to bail practices and procedures; creating new
2 sections; and providing an expiration date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends to appoint a panel
5 of experts to study bail practices and procedures. The bail system
6 must be examined in a comprehensive and well-considered manner from all
7 aspects including, but not limited to, judicial discretion, bail
8 amounts and procedures, public safety, variations in county practices,
9 constitutional restraints, and cost to local government. The variety
10 of practices and procedures requires that a panel of experts study the
11 issue and report its recommendation to the legislature.

12 NEW SECTION. **Sec. 2.** (1)(a) A work group on bail practices is
13 established within existing resources. The work group must consist of
14 the following members:

15 (i) One member from each of the two largest caucuses of the senate,
16 appointed by the president of the senate;

17 (ii) One member from each of the two largest caucuses of the house

1 of representatives, appointed by the speaker of the house of
2 representatives;

3 (iii) The chief justice of the Washington state supreme court or
4 the chief justice's designee;

5 (iv) A superior court judge, appointed by the superior court
6 judges' association;

7 (v) A district or municipal court judge, appointed by the district
8 and municipal court judges' association;

9 (vi) The governor or the governor's designee;

10 (vii) The secretary of the Washington state department of
11 corrections or the secretary's designee;

12 (viii) The director of the Washington state department of licensing
13 or the director's designee;

14 (ix) The Washington state insurance commissioner or the
15 commissioner's designee;

16 (x) Two prosecutors, appointed by the Washington association of
17 prosecuting attorneys or designees of the prosecutors;

18 (xi) Two attorneys selected by separate associations of attorneys
19 whose members have practices that focus on representing criminal
20 defendants;

21 (xii) One police officer and one deputy sheriff, selected by a
22 statewide association of such officers and deputies;

23 (xiii) A representative of a statewide association of city
24 governments, selected by the association;

25 (xiv) A representative of a statewide association of counties,
26 selected by the association;

27 (xv) A representative employed as an adult corrections officer,
28 selected by a statewide association of such officers;

29 (xvi) A representative from an entity representing corrections
30 officers at a local county jail in which adult offenders are in custody
31 and located in any county with a population in excess of one million
32 persons, selected by the entity;

33 (xvii) A representative of a statewide organization concerned
34 primarily with the protection of individual liberties, selected by the
35 organization;

36 (xviii) A representative of a statewide association of advocates
37 who work on behalf of victims and survivors of violent crimes, selected
38 by the association;

1 (xix) A representative of the bail bond enforcement industry,
2 chosen by a statewide association of bail bond enforcement agents;

3 (xx) A representative of the bail bond industry, selected by a
4 statewide association of bail companies; and

5 (xxi) A representative of a statewide consumer advocacy
6 organization with at least thirty thousand members, selected by the
7 organization.

8 (b) The work group shall choose its cochairs from among its
9 legislative membership. The legislative cochairs shall convene the
10 initial meeting of the work group.

11 (2) The work group shall review, at a minimum, the following
12 issues:

13 (a) All aspects of bail, paying particular attention to legislation
14 affecting bail and pretrial release introduced during the 2010
15 legislative session;

16 (b) A validated risk assessment tool that measures or predicts the
17 likelihood that an offender will exhibit violent behavior if released
18 and whether judges should use this tool at bail hearings;

19 (c) Bail practices by county, including the processes used to seek
20 and grant bail as well as the standards by which bail is granted;

21 (d) Whether, or to what extent, uniformity of bail practices should
22 be required by state law;

23 (e) The characteristics of the federal system;

24 (f) The benefits of competitive freedom of government regulation in
25 the pricing of bail bonds;

26 (g) The interests of crime victims in being notified of a person's
27 release on bail;

28 (h) The interests of counties and cities that maintain municipal
29 courts;

30 (i) Legal and constitutional constraints in granting or denying
31 bail;

32 (j) Whether the existing regulatory, judicial, or statutory
33 constraints on bail should be revised; and

34 (k) The pretrial release system.

35 (3) The work group shall use staff from senate committee services
36 and the house of representatives office of program research and meet in
37 state facilities that do not charge for use.

1 (4) Legislative members of the work group must be reimbursed for
2 travel expenses in accordance with RCW 44.04.120. Nonlegislative
3 members, except those representing an employer or organization, are
4 entitled to be reimbursed for travel expenses in accordance with RCW
5 43.03.050 and 43.03.060.

6 (5) The work group may organize itself in a manner and adopt rules
7 of procedure that it determines are most conducive to the timely
8 completion of its charge.

9 (6) The work group shall report its findings and recommendations to
10 the Washington state supreme court, the governor, and appropriate
11 committees of the legislature by December 1, 2010.

12 (7) This section expires December 31, 2010.

--- END ---

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2313

58th Legislature
2004 Regular Session

Passed by the House March 11, 2004
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 11, 2004
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2313** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2313

AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Carrell, Boldt and Mielke)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to bail bond recovery agents; amending RCW
2 18.185.010, 18.185.040, 18.185.090, 18.185.100, 18.185.110, and
3 18.185.170; adding new sections to chapter 18.185 RCW; creating a new
4 section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature recognizes that bail bond
7 agents and bail bond recovery agents serve a necessary and important
8 purpose in the criminal justice system by locating, apprehending, and
9 surrendering fugitive criminal defendants. The legislature also
10 recognizes that locating, apprehending, and surrendering fugitives
11 requires special skills and expertise; that bail bond agents and bail
12 bond recovery agents are often required to perform their duties under
13 stressful and demanding conditions; and that it serves the public
14 interest to have qualified people performing such essential functions.
15 Therefore, bail bond agencies that use the services of bail bond
16 recovery agents must, in the interest of public safety, use bail bond
17 recovery agents who possess the knowledge and competence necessary for
18 the job.

1 **Sec. 2.** RCW 18.185.010 and 2000 c 171 s 40 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Department" means the department of licensing.

6 (2) "Director" means the director of licensing.

7 (3) "Commission" means the criminal justice training commission.

8 (4) "Collateral or security" means property of any kind given as
9 security to obtain a bail bond.

10 ((+4)) (5) "Bail bond agency" means a business that sells and
11 issues corporate surety bail bonds or that provides security in the
12 form of personal or real property to ((insure)) ensure the appearance
13 of a criminal defendant before the courts of this state or the United
14 States.

15 ((+5)) (6) "Qualified agent" means an owner, sole proprietor,
16 partner, manager, officer, or chief operating officer of a corporation
17 who meets the requirements set forth in this chapter for obtaining a
18 bail bond agency license.

19 ((+6)) (7) "Bail bond agent" means a person who is employed by a
20 bail bond agency and engages in the sale or issuance of bail bonds, but
21 does not mean a clerical, secretarial, or other support person who does
22 not participate in the sale or issuance of bail bonds.

23 ((+7)) (8) "Licensee" means a bail bond agency ((or)), a bail bond
24 agent ((or both)), a qualified agent, or a bail bond recovery agent.

25 ((+8)) (9) "Branch office" means any office physically separated
26 from the principal place of business of the licensee from which the
27 licensee or an employee or ((agents conduct)) agent of the licensee
28 conducts any activity meeting the criteria of a bail bond agency.

29 (10) "Bail bond recovery agent" means a person who is under
30 contract with a bail bond agent to receive compensation, reward, or any
31 other form of lawful consideration for locating, apprehending, and
32 surrendering a fugitive criminal defendant for whom a bail bond has
33 been posted. "Bail bond recovery agent" does not include a general
34 authority Washington peace officer or a limited authority Washington
35 peace officer.

36 (11) "Contract" means a written agreement between a bail bond agent
37 or qualified agent and a bail bond recovery agent for the purpose of

1 locating, apprehending, and surrendering a fugitive criminal defendant
2 in exchange for lawful consideration.

3 (12) "Planned forced entry" means a premeditated forcible entry
4 into a dwelling, building, or other structure without the occupant's
5 knowledge or consent for the purpose of apprehending a fugitive
6 criminal defendant subject to a bail bond. "Planned forced entry" does
7 not include situations where, during an imminent or actual chase or
8 pursuit of a fleeing fugitive criminal defendant, or during a casual or
9 unintended encounter with the fugitive, the bail bond recovery agent
10 forcibly enters into a dwelling, building, or other structure without
11 advanced planning.

12 NEW SECTION. Sec. 3. A new section is added to chapter 18.185 RCW
13 to read as follows:

14 An applicant must meet the following requirements to obtain a bail
15 bond recovery agent license:

16 (1) Submit a fully completed application that includes proper
17 identification on a form prescribed by the director;

18 (2) Pass an examination determined by the director to measure his
19 or her knowledge and competence in the bail recovery business;

20 (3) Be at least twenty-one years old;

21 (4) Be a citizen or legal resident alien of the United States;

22 (5) Not have been convicted of a crime in any jurisdiction, if the
23 director determines that the applicant's particular crime directly
24 relates to a capacity to perform the duties of a bail bond recovery
25 agent, and that the license should be withheld to protect the citizens
26 of Washington state. The director shall make the director's
27 determination to withhold a license because of previous convictions
28 notwithstanding the restoration of employment rights act, chapter 9.96A
29 RCW;

30 (6) Submit a receipt showing payment for a background check through
31 the Washington state patrol and the federal bureau of investigation;

32 (7) Have a current firearms certificate issued by the commission if
33 carrying a firearm in the performance of his or her duties as a bail
34 bond recovery agent;

35 (8)(a) Have a current license to carry a concealed pistol if
36 carrying a firearm in the performance of his or her duties as a bail
37 bond recovery agent;

1 (b) A resident alien must provide a copy of his or her alien
2 firearm license if carrying a firearm in the performance of his or her
3 duties as a bail bond recovery agent; and

4 (9)(a) Pay the required nonrefundable fee for each application for
5 a bail bond recovery agent license;

6 (b) A bail bond agent or qualified agent who wishes to perform the
7 duties of a bail bond recovery agent must first obtain a bail bond
8 recovery agent endorsement to his or her bail bond agent or agency
9 license in order to act as a bail bond recovery agent, and pay the
10 required nonrefundable fee for each application for a bail bond
11 recovery agent endorsement.

12 **Sec. 4.** RCW 18.185.040 and 1993 c 260 s 5 are each amended to read
13 as follows:

14 (1) Applications for licenses required under this chapter shall be
15 filed with the director on a form provided by the director. The
16 director may require any information and documentation that reasonably
17 relates to the need to determine whether the applicant meets the
18 criteria, (~~which may include~~) including fingerprints.

19 (~~(2) ((After receipt of an application for a license, the director
20 may conduct an investigation to determine whether the facts set forth
21 in the application are true.))~~) Applicants for licensure or endorsement
22 as a bail bond recovery agent must complete a records check through the
23 Washington state patrol criminal identification system and through the
24 federal bureau of investigation at the applicant's expense. Such
25 record check shall include a fingerprint check using a Washington state
26 patrol approved fingerprint card. The Washington state patrol shall
27 forward the fingerprints of applicants to the federal bureau of
28 investigation for a national criminal history records check. The
29 director may accept proof of a recent national crime information
30 center/III criminal background report or any national or interstate
31 criminal background report in addition to fingerprints to accelerate
32 the licensing and endorsement process. The director is authorized to
33 periodically perform a background investigation of licensees to
34 identify criminal convictions subsequent to the renewal of a license or
35 endorsement.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.185 RCW
2 to read as follows:

3 (1) The director shall adopt rules establishing prelicense training
4 and testing requirements, which shall include a minimum of four hours
5 of classes. The director may establish, by rule, continuing education
6 requirements for bail bond recovery agents.

7 (2) The director shall consult with representatives of the bail
8 bond industry and associations before adopting or amending the
9 prelicensing training or continuing education requirements of this
10 section.

11 (3) A bail bond recovery agent need not fulfill the prelicensing
12 training requirements of this chapter if he or she, within sixty days
13 prior to July 1, 2005, provides proof to the director that he or she
14 previously has met the training requirements of this chapter.

15 (4) The director, or the director's designee, with the advice of
16 representatives of the bail bond industry and associations, law
17 enforcement agencies and associations, and prosecutors' associations,
18 shall adopt rules establishing prelicense training and testing
19 requirements and shall establish minimum exam standards necessary for
20 a bail bond recovery agent to qualify for licensure or endorsement.

21 (5) The standards shall be limited to the following:

22 (a) A minimum level of education or experience appropriate for
23 performing the duties of a bail bond recovery agent;

24 (b) A minimum level of knowledge in relevant areas of criminal and
25 civil law;

26 (c) A minimum level of knowledge regarding the appropriate use of
27 force and different degrees of the use of force; and

28 (d) Adequate training of the use of firearms from the criminal
29 justice training commission or from an instructor who has been trained
30 or certified by the criminal justice training center.

31 (6) The legislature does not intend, and nothing in this chapter
32 shall be construed to restrict or limit in any way the powers of bail
33 bond agents as recognized in and derived from the United States Supreme
34 Court case of *Taylor v. Taintor*, 16 Wall. 366 (1872).

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.185 RCW
36 to read as follows:

37 (1) Each fugitive criminal defendant to be recovered will be

1 treated as an individual contract between the bail bond agent and the
2 bail bond recovery agent. A bail bond agent shall provide a bail bond
3 recovery agent a copy of each individual contract. A bail bond
4 recovery agent must carry, in addition to the license issued by the
5 department, a copy of the contract and, if requested, must present a
6 copy of the contract and the license to the fugitive criminal
7 defendant, the owner or manager of the property in which the agent
8 entered in order to locate or apprehend the fugitive, other residents,
9 if any, of the residence in which the agent entered in order to locate
10 or apprehend the fugitive, and to the local law enforcement agency or
11 officer. If presenting a copy of the contract or the license at the
12 time of the request would unduly interfere with the location or
13 apprehension of the fugitive, the agent shall present the copy of the
14 contract or the license within a reasonable period of time after the
15 exigent circumstances expire.

16 (2) The director, or the director's designee, with the advice of
17 the bail bond industry and associations, law enforcement agencies and
18 associations, and prosecutors' associations shall develop a format for
19 the contract. At a minimum, the contract must include the following:

20 (a) The name, address, phone number, and license number of the bail
21 bond agency or bail bond agent contracting with the bail bond recovery
22 agent;

23 (b) The name and license number of the bail bond recovery agent;
24 and

25 (c) The name, last known address, and phone number of the fugitive.

26 **Sec. 7.** RCW 18.185.090 and 1993 c 260 s 10 are each amended to
27 read as follows:

28 (1) A bail bond agency shall notify the director within thirty days
29 after the death or termination of employment of any employee who is a
30 licensed bail bond agent.

31 (2) A bail bond agency shall notify the director within seventy-two
32 hours upon receipt of information affecting a licensed bail bond
33 agent's continuing eligibility to hold a license under the provisions
34 of this chapter.

35 (3) A bail bond agent or bail bond recovery agent shall notify the
36 director within seventy-two hours upon receipt of information affecting

1 the bail bond recovery agent's continuing eligibility to hold a bail
2 bond recovery agent's license under the provisions of this chapter.

3 (4) A bail bond agent or bail bond recovery agent shall notify the
4 local law enforcement agency whenever the bail bond recovery agent
5 discharges his or her firearm while on duty, other than on a supervised
6 firearms range. The notification must be made within ten business days
7 of the date the firearm is discharged.

8 **Sec. 8.** RCW 18.185.100 and 1996 c 242 s 3 are each amended to read
9 as follows:

10 (1) Every qualified agent shall keep adequate records for three
11 years of all collateral and security received, all trust accounts
12 required by this section, and all bail bond transactions handled by the
13 bail bond agency, as specified by rule. The records shall be open to
14 inspection without notice by the director or authorized representatives
15 of the director.

16 (2) Every qualified agent who receives collateral or security is a
17 fiduciary of the property and shall keep adequate records for three
18 years of the receipt, safekeeping, and disposition of the collateral or
19 security. Every qualified agent shall maintain a trust account in a
20 federally insured financial institution located in this state. All
21 moneys, including cash, checks, money orders, wire transfers, and
22 credit card sales drafts, received as collateral or security or
23 otherwise held for a bail bond agency's client shall be deposited in
24 the trust account not later than the third banking day following
25 receipt of the funds or money. A qualified agent shall not in any way
26 encumber the corpus of the trust account or commingle any other moneys
27 with moneys properly maintained in the trust account. Each qualified
28 agent required to maintain a trust account shall report annually under
29 oath to the director the account number and balance of the trust
30 account, and the name and address of the institution that holds the
31 trust account, and shall report to the director within ten business
32 days whenever the trust account is changed or relocated or a new trust
33 account is opened.

34 (3) Whenever a bail bond is exonerated by the court, the qualified
35 agent shall, within five business days after written notification of
36 exoneration (~~and upon written demand~~), return all collateral or
37 security to the person entitled thereto.

1 (4) Records of contracts for fugitive apprehension must be retained
2 by the bail bond agent and by the bail bond recovery agent for a period
3 of three years.

4 **Sec. 9.** RCW 18.185.110 and 2002 c 86 s 251 are each amended to
5 read as follows:

6 In addition to the unprofessional conduct described in RCW
7 18.235.130, the following conduct, acts, or conditions constitute
8 unprofessional conduct:

9 (1) Violating any of the provisions of this chapter or the rules
10 adopted under this chapter;

11 (2) Failing to meet the qualifications set forth in RCW 18.185.020
12 and 18.185.030;

13 (3) Knowingly committing, or being a party to, any material fraud,
14 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
15 or device whereby any other person lawfully relies upon the word,
16 representation, or conduct of the licensee. However, this subsection
17 (3) does not prevent a bail bond recovery agent from using any pretext
18 to locate or apprehend a fugitive criminal defendant or gain any
19 information regarding the fugitive;

20 (4) Assigning or transferring any license issued pursuant to the
21 provisions of this chapter, except as provided in RCW 18.185.030;

22 (5) Conversion of any money or contract, deed, note, mortgage, or
23 other evidence of title, to his or her own use or to the use of his or
24 her principal or of any other person, when delivered to him or her in
25 trust or on condition, in violation of the trust or before the
26 happening of the condition; and failure to return any money or
27 contract, deed, note, mortgage, or other evidence of title within
28 thirty days after the owner is entitled to possession, and makes demand
29 for possession, shall be prima facie evidence of conversion;

30 (6) Failing to keep records, maintain a trust account, or return
31 collateral or security, as required by RCW 18.185.100;

32 (7) Any conduct in a bail bond transaction which demonstrates bad
33 faith, dishonesty, or untrustworthiness; (~~or~~)

34 (8) Violation of an order to cease and desist that is issued by the
35 director under this chapter;

36 (9) Wearing, displaying, holding, or using badges not approved by
37 the department;

1 (10) Making any statement that would reasonably cause another
2 person to believe that the bail bond recovery agent is a sworn peace
3 officer;

4 (11) Failing to carry a copy of the contract or to present a copy
5 of the contract as required under section 6(1) of this act;

6 (12) Using the services of an unlicensed bail bond recovery agent
7 or using the services of a bail bond recovery agent without issuing the
8 proper contract;

9 (13) Misrepresenting or knowingly making a material misstatement or
10 omission in the application for a license;

11 (14) Using the services of a person performing the functions of a
12 bail bond recovery agent who has not been licensed by the department as
13 required by this chapter; or

14 (15) Performing the functions of a bail bond recovery agent without
15 being both (a) licensed under this chapter or supervised by a licensed
16 bail bond recovery agent under section 11 of this act; and (b) under
17 contract with a bail bond agent.

18 NEW SECTION. Sec. 10. A new section is added to chapter 18.185
19 RCW to read as follows:

20 (1) A person may not perform the functions of a bail bond recovery
21 agent unless the person is licensed by the department under this
22 chapter.

23 (2) A bail bond agent may contract with a person to perform the
24 functions of a bail bond recovery agent. Before contracting with the
25 bail bond recovery agent, the bail bond agent must check the license
26 issued by the department under this chapter. The requirements
27 established by the department under this chapter do not prevent the
28 bail bond agent from imposing additional requirements that the bail
29 bond agent considers appropriate.

30 (3) A contract entered into under this chapter is authority for the
31 person to perform the functions of a bail bond recovery agent as
32 specifically authorized by the contract and in accordance with
33 applicable law. A contract entered into by a bail bond agent with a
34 bail bond recovery agent is not transferable by the bail bond recovery
35 agent to another bail bond recovery agent.

36 (4) Whenever a person licensed by the department as a bail bond

1 recovery agent is engaged in the performance of the person's duties as
2 a bail bond recovery agent, the person must carry a copy of the
3 license.

4 (5) A license or endorsement issued by the department under this
5 chapter is valid from the date the license or endorsement is issued
6 until its expiration date unless it is suspended or revoked by the
7 department prior to its expiration date.

8 (6) No person may perform the functions of a bail bond recovery
9 agent after December 31, 2005, unless the person has first complied
10 with the provisions of this chapter.

11 (7) Nothing in this chapter is meant to prevent a bail bond agent
12 from contacting a fugitive criminal defendant for the purpose of
13 requesting the surrender of the fugitive, or from accepting the
14 voluntary surrender of the fugitive.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 18.185
16 RCW to read as follows:

17 A bail bond recovery agent from another state who is not licensed
18 under this chapter may not perform the functions of a bail bond
19 recovery agent in this state unless the agent is working under the
20 direct supervision of a licensed bail bond recovery agent.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.185
22 RCW to read as follows:

23 (1) Before a bail bond recovery agent may apprehend a person
24 subject to a bail bond in a planned forced entry, the bail bond
25 recovery agent must notify an appropriate law enforcement agency in the
26 local jurisdiction in which the apprehension is expected to occur.
27 Notification must include, at a minimum: The name of the defendant;
28 the address, or the approximate location if the address is
29 undeterminable, of the dwelling, building, or other structure where the
30 planned forced entry is expected to occur; the name of the bail bond
31 recovery agent; the name of the contracting bail bond agent; and the
32 alleged offense or conduct the defendant committed that resulted in the
33 issuance of a bail bond.

34 (2) During the actual planned forced entry, a bail bond recovery
35 agent:

1 (a) Shall wear a shirt, vest, or other garment with the words "BAIL
2 BOND RECOVERY AGENT" displayed in at least two-inch-high reflective
3 print letters across the front and back of the garment and in a
4 contrasting color to that of the garment; and

5 (b) May display a badge approved by the department with the words
6 "BAIL BOND RECOVERY AGENT" prominently displayed.

7 **Sec. 13.** RCW 18.185.170 and 2002 c 86 s 254 are each amended to
8 read as follows:

9 (1) (~~After June 30, 1994,~~) Any person who performs the functions
10 and duties of a bail bond agent in this state without being licensed in
11 accordance with the provisions of this chapter, or any person
12 presenting or attempting to use as his or her own the license of
13 another, or any person who gives false or forged evidence of any kind
14 to the director in obtaining a license, or any person who falsely
15 impersonates any other licensee, or any person who attempts to use an
16 expired or revoked license, or any person who violates any of the
17 provisions of this chapter is guilty of a gross misdemeanor.

18 (2) (~~After January 1, 1994,~~) A person is guilty of a gross
19 misdemeanor if ((he or she)) the person owns or operates a bail bond
20 agency in this state without first obtaining a bail bond agency
21 license.

22 (3) (~~After June 30, 1994,~~) The owner or qualified agent of a bail
23 bond agency is guilty of a gross misdemeanor if ((he or she)) the owner
24 or qualified agent employs any person to perform the duties of a bail
25 agent without the employee having in ((his or her)) the employee's
26 possession a permanent bail bond agent license issued by the
27 department.

28 (4) After December 31, 2005, a person is guilty of a gross
29 misdemeanor if the person:

30 (a) Performs the functions of a bail bond recovery agent without
31 first obtaining a license from the department and entering into a
32 contract with a bail bond agent as required by this chapter; or, in the
33 case of a bail bond recovery agent from another state, the person
34 performs the functions of a bail bond recovery agent without operating
35 under the direct supervision of a licensed bail bond recovery agent as
36 required by this chapter; or

1 (b) Conducts a planned forced entry without first complying with
2 the requirements of this chapter.

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