

1 HB134
2 156167-1
3 By Representative England
4 RFD: Public Safety and Homeland Security
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

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8 SYNOPSIS: Under existing law, a professional bail
9 company may arrest a defendant who fails to appear
10 for trial upon a certified copy of the undertaking
11 of bail or another person may be authorized to
12 arrest the defendant.

13 This bill would provide that, in order to
14 obtain a certified copy of the undertaking, a
15 professional bail company must submit a sworn
16 affidavit to the court clerk setting out the
17 violations of the defendant and would provide that
18 false statements on the affidavit would constitute
19 perjury in the third degree.

20 This bill would provide that only employees,
21 agents, or persons with a financial interest in the
22 professional bail company who have made the
23 certifications or are listed on the certifications
24 provided by law may arrest a defendant on a
25 certified copy of the undertaking.

26 Under existing law, a professional bail
27 company may become a surety on any appearance bond

1 in the state upon satisfying certain certification
2 requirements.

3 This bill would provide a maximum amount of
4 an appearance bond that a professional bail company
5 may post per defendant.

6 This bill would require a professional bail
7 company to provide an affidavit, sworn to and
8 signed by an owner, principal, member, or person
9 with a financial interest in the professional bail
10 company, setting forth proof of satisfaction of
11 certain requirements, including new requirements
12 related to criminal background histories and other
13 additional information.

14 This bill would provide for fees for
15 certification and would specify the disbursement of
16 the fees.

17 This bill would also require a person
18 employed by a professional bail company to pass an
19 examination developed by the Department of
20 Insurance and comply with other educational
21 requirements.

22 This bill would provide penalties for
23 persons providing false information.

24 Under existing law, authority to act as a
25 professional surety company or a professional bail
26 company may be revoked or withheld by a court for

1 violations of the laws governing professional bail
2 companies.

3 This bill would authorize the revocation of
4 authority to act as a professional surety company
5 or a professional bail company if specified acts
6 are committed.

7 Amendment 621 of the Constitution of Alabama
8 of 1901, now appearing as Section 111.05 of the
9 Official Recompilation of the Constitution of
10 Alabama of 1901, as amended, prohibits a general
11 law whose purpose or effect would be to require a
12 new or increased expenditure of local funds from
13 becoming effective with regard to a local
14 governmental entity without enactment by a 2/3 vote
15 unless: it comes within one of a number of
16 specified exceptions; it is approved by the
17 affected entity; or the Legislature appropriates
18 funds, or provides a local source of revenue, to
19 the entity for the purpose.

20 The purpose or effect of this bill would be
21 to require a new or increased expenditure of local
22 funds within the meaning of the amendment. However,
23 the bill does not require approval of a local
24 governmental entity or enactment by a 2/3 vote to
25 become effective because it comes within one of the
26 specified exceptions contained in the amendment.

1 A BILL
2 TO BE ENTITLED
3 AN ACT

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5 Relating to bail bonds; to amend Section 15-13-62,
6 Code of Alabama 1975, to require a professional bail company
7 to submit a sworn affidavit to the court clerk setting out the
8 violations of the defendant in order to obtain a certified
9 copy of the undertaking; to provide that false statements on
10 the affidavit would be perjury in the third degree; to provide
11 that only employees, agents, or persons with a financial
12 interest in the professional bail company who have made the
13 certifications or are listed on the certifications provided by
14 law may arrest a defendant on a certified copy of the
15 undertaking; to provide for a fee for each certified copy of
16 the undertaking; to provide for the disbursement of the fee;
17 to amend Section 15-13-160, Code of Alabama 1975, relating to
18 professional bail companies, to provide a maximum amount of an
19 appearance bond that a professional bail company may post per
20 defendant; to require professional bail companies to provide
21 an affidavit, sworn to and signed by certain persons
22 affiliated with the company, setting forth proof of
23 satisfaction of certain requirements; to provide for fees for
24 certification; to provide for disbursement of the fees; to
25 require a person employed by a professional bail company to
26 pass an examination developed by the Department of Insurance;
27 to provide penalties for providing false information; to amend

1 Section 15-13-163, Code of Alabama 1975, relating to the
2 examination of sureties and documents, to authorize the
3 revocation of authority to act as a professional surety
4 company or a professional bail company if specified acts are
5 committed; to require a professional bail company to notify
6 the presiding judge and the district attorney's office in the
7 counties where the professional bail company is certified, in
8 writing, if any person, including an employee, agent, or other
9 person with a financial interest in the professional bail
10 company is arrested for a felony or certain other criminal
11 offenses within a specified time frame; and in connection
12 therewith would have as its purpose or effect the requirement
13 of a new or increased expenditure of local funds within the
14 meaning of Amendment 621 of the Constitution of Alabama of
15 1901, now appearing as Section 111.05 of the Official
16 Recompilation of the Constitution of Alabama of 1901, as
17 amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 15-13-62, 15-13-160, and
20 15-13-163, Code of Alabama 1975, are amended to read as
21 follows:

22 "§15-13-62.

23 "(a) Bail may, at any time before a conditional
24 judgment is entered against them, exonerate themselves by
25 surrendering the defendant; ~~and for that purpose, they~~ . In
26 order to obtain a certified copy of the undertaking, the
27 professional bail company shall submit a sworn affidavit to

1 the court clerk setting out the violations of the defendant.
2 Upon receiving the certified copy of the undertaking, a person
3 authorized pursuant to subsection (b) may arrest the defendant
4 on a certified copy of the undertaking at any place in the
5 state, or may authorize another person to arrest him by an
6 endorsement in writing on such copy. Any false statement set
7 out in the sworn affidavit to the presiding judge is a
8 violation of Section 13A-10-103.

9 "(b) Only employees, agents, or persons with a
10 financial interest in the professional bail company who have
11 made the certifications or are listed on the certifications
12 provided in Section 15-13-160 may make an arrest.

13 "(c) (1) A fee of fifty dollars (\$50) shall be
14 assessed for each certified copy of the undertaking to be
15 distributed on an annual basis as follows:

16 "a. Ten percent to the county general fund to be
17 earmarked and distributed to the Sheriff's Fund, administered
18 by the sheriff, in the county where the annual certification
19 was filed.

20 "b. Forty-five percent to the circuit clerk's fund
21 in the county where the annual certification was filed.

22 "c. Forty-five percent to the Solicitor's Fund in
23 the county where the annual certification was filed.

24 "(2) The records regarding the fees collected shall
25 be audited by the Department of Examiners of Public Accounts.

26 "§15-13-160.

1 "(a) No professional bail company shall execute or
2 become surety on any appearance bond in this state, unless it
3 has an order granting authorization to become professional
4 surety on any bail. The order granting authorization shall be
5 reissued annually prior to January 1 of each year by the
6 presiding circuit judge of the county in which the company
7 desires to execute bail or appearance bonds. Prior to the
8 judge's issuance of the original order and no later than
9 December 1 of each year, thereafter, professional bail
10 companies shall submit annually to the presiding circuit judge
11 the an affidavit, sworn to and signed by an owner, principal,
12 member, or person with a financial interest in the
13 professional bail company, setting forth proof of the
14 following:

15 "(1) An original ~~corporate surety bond or~~ escrow
16 agreement, filed and approved by the presiding circuit judge
17 of the county in which the professional bail company executes
18 or becomes surety on appearance bonds, in the minimum amount
19 of ~~\$25,000~~ one hundred thousand dollars (\$100,000),
20 guaranteeing the payment of all sums of money that may become
21 due by virtue of any judgment absolute that may be rendered
22 against the professional bail company on a forfeiture entered
23 by any court in the county if the professional bail company is
24 established after the effective date of the act adding this
25 amendatory language. A presiding judge may require a
26 professional bail company to file an escrow agreement in an
27 amount greater than the minimum amount based upon facts and

1 circumstances known by the presiding judge. A determination to
2 exceed the minimum amount may include the amount of
3 outstanding bonds that a professional bail company has at the
4 time of the application. Upon a determination to exceed the
5 minimum amount, the presiding judge shall file an order
6 setting out the basis for exceeding the minimum amount.

7 ~~Corporate surety bonds shall be executed only by a surety~~
8 ~~company authorized to do business in the State of Alabama and~~
9 ~~qualified to write bonds by the Department of Insurance. The~~
10 ~~corporate surety bond shall provide that it may be cancelled~~
11 ~~as to any future liability by the corporate surety company or~~
12 ~~the professional bail company giving 30 days prior written~~
13 ~~notice of the cancellation to the clerk of the circuit court~~
14 ~~in which the bond or instrument was filed. A bank in the State~~
15 ~~of Alabama shall be a party to all escrow agreements, and~~
16 ~~those agreements shall provide that the agreement may be~~
17 ~~cancelled as to any future liability only by the professional~~
18 ~~bail company and bank giving 30 days prior written notice of~~
19 ~~the cancellation to the clerk of the circuit court in which~~
20 ~~the escrow agreement or instrument is filed. Once a~~
21 ~~professional bail company has filed an original continuous~~
22 ~~corporate surety bond or~~ escrow agreement with the circuit
23 clerk and it has been approved by the presiding circuit judge,
24 then the professional bail company does not have to file any
25 other original continuous ~~corporate surety bond or~~ escrow
26 agreement upon annual recertification. The professional bail
27 company shall submit ~~an original certificate from the~~

1 ~~insurance company which executed the corporate surety bond~~
2 ~~reflecting that it is still in force or an original letter~~
3 from the bank stating the escrow agreement is still effective
4 and the moneys are still held in trust. When any professional
5 bail company is annually recertifying, the ~~circuit clerk shall~~
6 ~~send the original corporate surety bond or original escrow~~
7 ~~agreement~~ professional bail company shall obtain from the
8 circuit clerk a certified list of its outstanding appearance
9 bonds and their amounts, referenced by applicable case numbers
10 and a copy of the original escrow agreement with any
11 cancellations received by the circuit clerk to the presiding
12 circuit judge for review and approval pursuant to this
13 section. A professional bail company authorized by the
14 presiding judge on the effective date of the act adding this
15 amendatory language is not subject to the minimum requirements
16 of this subdivision. However, if a professional bail company
17 authorized prior to the effective date of the act adding this
18 amendatory language ceases to do business or becomes
19 unauthorized, the company shall comply with the minimum amount
20 requirements in this subdivision in all future authorization
21 requests.

22 "(2) An original qualifying power of attorney,
23 letter, or other document issued by the professional bail
24 company specifying any applicable limitations and specifying
25 the agents who are authorized to execute and bind the
26 professional bail company to a bail undertaking or to

1 appearance bonds. The qualifying power of attorney, letter, or
2 other document may only name persons as agents.

3 "(3) An original affidavit or certificate in
4 writing, under oath, executed by an owner or officer of a
5 professional bail company, to the clerk of the circuit court
6 of the county in which the professional bail company shall
7 execute or become surety on appearance bonds which contains
8 the following:

9 "a. That all appearance bonds shall be executed in
10 the name of the professional bail company as surety by the
11 agents listed or appointed in the qualifying power of
12 attorney, letter, or other document presented to the court or
13 any other person so named in any future qualifying powers of
14 attorney, letters, or documents filed with the circuit clerk
15 of the county.

16 "b. That the professional bail company is qualified
17 to do business in this state and its resident address.

18 "c. That the professional bail company has
19 sufficient financial net worth to satisfy its obligations as a
20 surety.

21 "d. That no person having a direct or indirect
22 financial interest, including an employee, agent, or other
23 person with a financial interest in the professional bail
24 company has been convicted of or is currently charged with any
25 felony or any crime involving moral turpitude or any
26 offense which has as an element of domestic violence in any
27 degree, assault in any degree, sex offenses, drug offenses,

1 theft in any degree, use of a deadly weapon or dangerous
2 instrument, or any person who is the subject of an active
3 protection from abuse order issued by a court of competent
4 jurisdiction in this state or any other state. Notwithstanding
5 the foregoing, if any person having a direct or indirect
6 financial interest in the bonding business has been convicted
7 of a felony or a crime involving moral turpitude, then the
8 person making the certification shall certify that there has
9 been a conviction, provide the name of the person convicted,
10 and certify that the person convicted has been pardoned or has
11 had a restoration of civil rights. Any person, including an
12 employee, agent, or other person with a financial interest in
13 the professional bail company, shall submit to fingerprinting
14 by the local sheriff's office for the purpose of obtaining
15 national criminal history record information regarding the
16 applicant. The applicant shall pay for the cost of the
17 fingerprinting and criminal records check and submit the
18 results of the records search to the presiding judge as part
19 of the biannual certification process. The presiding judge
20 shall review the records presented under this paragraph. If
21 the report indicates that there is a pending charge for a
22 felony or other offense described in this paragraph, an
23 offense or a conviction for a felony or offense for which
24 there is not a sworn certification by the individual and the
25 owner of the professional bail company that the person
26 convicted has been pardoned or has had a restoration of civil
27 rights to include certified documentation from the appropriate

1 government agency that issued the pardon or reinstatement of
2 civil rights, the individual shall be prohibited from owning,
3 operating, or working for the professional bail company in any
4 capacity.

5 "e. That the professional bail company has no
6 knowledge of any forfeiture that has been made final for more
7 than 30 days that has not been paid arising out of surety
8 undertakings and as to which the professional bail company has
9 no petitions, motions, or other litigation matters pending.

10 "f. That there are no persons, including employees,
11 agents, or persons with a financial interest in the
12 professional bail company, who, within a period of two years,
13 violated this chapter, or any rules adopted by the Supreme
14 Court governing the qualifications of professional surety or
15 bail companies.

16 "g. That no ~~employee, agent, or any other person~~
17 having a direct or indirect person, including an employee,
18 agent, or other person with a financial interest in the
19 professional bail company, is an attorney, a judicial
20 official, a person authorized to accept an appearance bond, or
21 an agent of an attorney, judicial official, or person
22 authorized to accept an appearance bond.

23 "h. The names and addresses of all ~~officers,~~
24 ~~employees, and agents of~~ persons, including employees, agents,
25 or persons with a financial interest in the professional bail
26 company ~~who have a direct or indirect financial interest in~~

1 ~~the professional bail company~~ and the nature and extent of
2 ~~each~~ the interest.

3 "(b) A list of persons, including employees, agents,
4 or persons with a financial interest in the professional bail
5 company shall be included in the annual report to the
6 presiding judge and shall include confirmation that each
7 individual has a high school diploma or GED. Each annual
8 report shall also include confirmation that the owner and
9 employees have completed the 40-hour course required under
10 subsection (e) and passed the state examination before
11 performing any duties for the professional bail bond company.
12 Each annual report shall also include the continuing education
13 hours earned each quarter by the owner and employees and, if
14 none are earned, when the owner and employees are scheduled to
15 take any courses. If no courses are scheduled by the owner and
16 employees at that time, a statement shall be submitted
17 verifying that no courses are scheduled to be taken at that
18 time. This information shall be sworn to by the owner of the
19 professional bail bond company and upon request at any time
20 from the presiding judge or the district attorney within the
21 jurisdiction. The professional bail bond company shall produce
22 sworn proof of these requirements within 10 days of the date
23 the request is made.

24 "(c) Any person, including an employee, agent, or
25 other person with a financial interest in a professional bail
26 company in which a final forfeiture remains unresolved or not
27 paid in full is prohibited from certification.

1 "(d) (1) A filing fee shall be paid for each annual
2 certification in the amount of one hundred dollars (\$100) to
3 be distributed on an annual basis as follows:

4 "a. Ten percent to the county general fund to be
5 distributed to the Sheriff's Fund, administered by the
6 sheriff, in the county where the annual certification was
7 filed.

8 "b. Forty-five percent to the court clerk's fund
9 where the annual certification was filed.

10 "c. Forty-five percent to the Solicitor's Fund in
11 the county where the annual certification was filed.

12 "(2) The Examiners of Public Accounts shall audit
13 all records relating to the payment of fees under this
14 subsection.

15 "(e) A professional bail agent employed in any
16 capacity, whether full-time, part-time, contract, or in any
17 way paid by any professional bail bond company must satisfy
18 all of the following requirements:

19 "(1) Possess a high school diploma or GED
20 equivalent.

21 "(2) Complete a 40-hour training course approved by
22 the Department of Insurance.

23 "(3) Pass a state certification exam developed and
24 administered by the Department of Insurance.

25 "(4) Maintain annual continuing education hours set
26 by the Department of Insurance.

1 "(f) A person with a financial interest in the
2 professional bail company and the individual whose signature
3 appears on the sworn statements seeking recertification
4 pursuant to this section, if different from the persons with a
5 financial interest in the professional bail company, who
6 provides false information regarding any requirements of this
7 section shall be guilty of a violation of Section 13A-10-103.

8 "§15-13-163.

9 "(a) The presiding judge of the circuit court may,
10 and on verified motion of the prosecutor shall, subpoena the
11 representatives of the professional surety company or
12 professional bail company or other persons for examination
13 under oath concerning matters relating to any affidavit or
14 certificate filed, outstanding forfeitures, and all relevant
15 books, tax returns, and financial data. Authority to act as a
16 professional surety company or a professional bail company may
17 be revoked or withheld by the court for violation of this
18 chapter, any rule promulgated by the Supreme Court of the
19 State of Alabama, in accordance with this chapter, for failure
20 to submit subpoenaed documents, for failure to answer
21 truthfully all relevant questions asked by the court, or in
22 the event the professional surety company or professional bail
23 company has outstanding and unpaid final forfeitures anywhere,
24 or in any court in the State of Alabama. As used herein,
25 outstanding unpaid final forfeitures shall be those in which a
26 final order of forfeiture has been entered by the court and 30
27 days have elapsed since the date of the final judgment;

1 provided, however, that those companies have no petitions,
2 appeals, or other matters of litigation pending of which the
3 court has knowledge.

4 "(b) In addition to subsection (a), the authority of
5 a professional surety company or professional bail company may
6 be revoked or suspended if it is determined to the reasonable
7 satisfaction of the judge that any person, including an
8 employee, agent, or other person with a financial interest in
9 a professional surety company or a professional bail company
10 in any jurisdiction in this state, commits any of the
11 following acts:

12 "(1) Knowingly commits, or is a party to, any
13 material fraud, misrepresentation, concealment, conspiracy,
14 collusion, forgery, scheme, or device whereby any other person
15 lawfully relies upon the word, representation, or conduct of
16 any person representing or employed by the professional bail
17 company.

18 "(2) Solicits sexual favors or extorts additional
19 consideration as a condition of obtaining, maintaining, or
20 exonerating bail bond, regardless of the identity of the
21 person who performs the favors.

22 "(3) Conducts a bail bond transaction that
23 demonstrates bad faith, dishonesty, coercion, incompetence,
24 extortion, or untrustworthiness.

25 "(4) Coerces, suggests, aids and abets, offers a
26 promise of favor, or threatens any person on whose bond he or

1 she is surety or offers to become surety, to induce that
2 person to commit any crime.

3 "(5) Gives or receives, directly or indirectly, any
4 gift of any kind to any nonelected public official or any
5 employee of a governmental agency involved with the
6 administration of justice, including, but not limited to, law
7 enforcement personnel, magistrates, judges, jail employees,
8 and attorneys.

9 "(6) Fails to comply with any of the statutory or
10 regulatory requirements governing professional bail companies.

11 "(7) Fails to cooperate with any investigation by a
12 district attorney's office or a presiding judge.

13 "(8) Fails to comply with any subpoena issued by a
14 district attorney's office or a presiding judge.

15 "(9) With regard to professional bail companies,
16 violates Section 15-13-160, including providing materially
17 incorrect, misleading, incomplete, or untrue information in
18 any certification required under Section 15-13-160.

19 "(10) Provides bail for any person if he or she is
20 also an attorney representing that person.

21 "(11) Provides bail for any person if the bondsman
22 was initially involved in the arrest of that person.

23 "(c) (1) The professional bail company shall notify
24 the presiding judge and the district attorney's office in the
25 counties where the professional bail company is certified, in
26 writing, if any person, including an employee, agent, or other
27 person with a financial interest in the professional bail

1 company is arrested for a felony or a crime involving moral
2 turpitude in any state. The notification shall be made within
3 72 hours of the arrest.

4 "(2) The written notice shall contain all of the
5 following information:

6 "a. Date of the arrest.

7 "b. Location of the arrest.

8 "c. Offense for which the person was arrested.

9 "d. The name and address of the law enforcement
10 agency making the arrest.

11 "e. The court before which the person is to appear.

12 "f. The date of the initial court appearance.

13 "g. Certification that the person is no longer
14 working for the professional bail company.

15 "h. Any other information the professional bail
16 company may want to include.

17 "(3) Failure to comply with this subsection shall
18 result in an automatic suspension of the professional bail
19 company. The presiding judge may not lift the suspension
20 unless and until the professional bail company has terminated
21 or otherwise separated from the individual charged. If notice
22 is not made as required in subdivision (2), the district
23 attorney's office may move to revoke the certification of the
24 professional bail company. If certification is revoked in any
25 jurisdiction in this state, the certification is deemed
26 revoked in all jurisdictions in this state."

1 Section 2. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 3. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.