



State of Wisconsin
2011 – 2012 LEGISLATURE



LRB-2561/1
MPG&PJH:med:jm

2011 BILL

1 **AN ACT** *to repeal* 969.12 (1); *to amend* subchapter II (title) of chapter 440
2 [precedes 440.26] and 969.12 (2); and *to create* 20.165 (1) (gk), 440.03 (13) (b)
3 12g., 440.03 (13) (b) 12r., 440.08 (2) (a) 15e., 440.08 (2) (a) 15m., 440.08 (2) (a)
4 15s., 440.28, 440.281, 440.282, 440.283, 440.284, 440.286, 440.287, 440.288,
5 440.289 and 628.02 (1) (b) 9. of the statutes; **relating to:** licensure of
6 commercial bail bond agents and bail bond agencies and certification of
7 commercial bail recovery agents, providing an exemption from emergency rule
8 procedures, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a defendant who has been arrested for a criminal offense or a defendant who has been convicted of a crime and is awaiting sentencing may be released with bail as a condition of release. Bail may be satisfied by the execution of a bail bond with sufficient sureties. Most such sureties must be natural persons who are Wisconsin residents. No surety may be compensated for acting as a surety on a bail bond.

This bill authorizes the compensation of a surety on a bail bond if the surety is a bail bond agent or a bail bond agency licensed by the Department of Safety and Professional Services (DSPS) and the bail bond is underwritten by an insurance

BILL

company authorized to do a surety business in this state. A licensed bail bond agent or agency must be compensated at a rate of 10 percent of the amount of the bond set.

Under the bill, DSPS must grant a license to act as a bail bond agent to an individual who applies for licensure if DSPS determines that the individual satisfies any education, training, and examination requirements established by DSPS by rule, does not have a relevant arrest or conviction record, has paid an initial licensure fee of \$1,000, and satisfies any other requirements DSPS establishes by rule.

Similarly, the bill requires DSPS to grant a license to act as a bail bond agency to a business if, after receiving an application for licensure, DSPS determines that at least one owner, officer, director, member, or partner of the business is a bail bond agent licensed by DSPS, that the business has paid an initial licensure fee of \$1,000, and that the business satisfies any other requirements imposed by DSPS.

The bill also establishes certification requirements for bail recovery agents. A bail recovery agent is an individual who is compensated to locate, apprehend, transport, or surrender a principal on a bail bond. Under the bill, only an individual who is already licensed by DSPS as a private investigator may be certified as a bail recovery agent in Wisconsin.

Under the bill, DSPS is required to keep a register of the names and addresses of all licensed bail bond agents and agencies and all certified bail recovery agents. DSPS must make that register available to the public. Additionally, on an annual basis, DSPS must provide a complete list to the clerk of circuit court in each county that includes the names and addresses of all licensed bail bond agents and agencies and all certified bail recovery agents, and DSPS is required to promptly notify the clerk of circuit court in each county concerning any disciplinary action DSPS takes against a licensed bail bond agent or agency or a certified bail recovery agent.

The bill requires that a licensed bail bond agency file a bond or liability policy with DSPS in an amount determined by DSPS by rule and that a licensed bail bond agent who is not covered under an agency's bond or liability policy file a bond or liability policy with DSPS in an amount determined by DSPS by rule.

The bill establishes specific restrictions concerning business referrals. No bail bond agent or agency or bail recovery agent, and no agent or employee of a bail bond agent or agency or bail recovery agent, may in the course of its business suggest that a principal on a bail bond or prospective principal on a bail bond contact or engage the services of a specific attorney or law firm. Also under the bill, no law enforcement officer or other employee of the state or of a city, village, town, or county may suggest that a defendant contact or engage the services of a specific bail bond agent or agency.

The bill directs DSPS to promulgate rules to administer licensure of bail bond agents and agencies and certification of bail recovery agents. The rules promulgated by DSPS must do at least all of the following:

1. Establish photograph identification requirements for bail bond agents and bail recovery agents.

2. Establish rules of conduct for bail bond agents and agencies and bail recovery agents, including rules that prohibit the use or display of badges, shields, or other similar images or items normally associated with law enforcement; rules that require contact with local law enforcement before an attempt is made to apprehend

BILL

a principal on a bail bond; and rules that establish other requirements concerning the location, apprehension, transportation, and surrender of principals.

3. Establish procedures for the temporary certification of bail recovery agents from other states. Under the bill, DSPS may also enter into reciprocal agreements with other states concerning the activities of bail bond agents and agencies and bail recovery agents in the respective states.

4. Establish appropriate education, training, examination, and other requirements for the initial licensure of bail bond agents and the initial certification of bail recovery agents and establish appropriate continuing education, training, and other requirements for the renewal of those licenses and certifications.

In promulgating its rules, the bill requires DSPS to consult the laws of other states and federal law regarding bail bond agents, bail bond agencies, and bail recovery agents, and the bill requires DSPS to attempt to make its rules consistent with those laws. The bill authorizes DSPS to issue emergency rules.

The bill further authorizes DSPS to take disciplinary action, including imposing forfeitures established by DSPS by rule, but not exceeding \$5,000, against a bail bond agent or agency or a bail recovery agent that does any of the following:

1. Intentionally makes a material misstatement in an application for a license or license renewal or a certification or certification renewal.
2. Advertises in a manner that is false or misleading.
3. Obtains or attempts to obtain compensation through fraud or deceit.
4. Violates the law, including rules promulgated by DSPS, regarding bail bond agents and agencies and bail recovery agents or violates any other Wisconsin law, any law of another state, or any federal law that substantially relates to the activity of a bail bond agent or agency or a bail recovery agent.
5. Engages in unprofessional conduct.

Finally, the bill requires DSPS to establish an advisory committee to advise DSPS on matters relating to the regulation of bail bond agents and agencies and bail recovery agents. Under the bill, the committee must consist of six members appointed by DSPS and one member appointed by the governor. The members of the committee serve three-year terms and may not serve more than two consecutive terms. The committee must consist of the following members:

1. One private criminal defense attorney admitted to practice law in Wisconsin.
2. One current or former law enforcement officer in Wisconsin.
3. One current or former Wisconsin circuit court judge.
4. One member of the public who is a Wisconsin citizen and who is not a current or former law enforcement officer.
5. One member of the legislature, who is nominated by the governor and appointed with the advice and consent of the senate.
6. Two representatives of the bail bond industry in Wisconsin.

BILL

1 **SECTION 6.** 440.08 (2) (a) 15m. of the statutes is created to read:
2 440.08 **(2)** (a) 15m. Bail bond agent: December 1 of each even-numbered year.

3 **SECTION 7.** 440.08 (2) (a) 15s. of the statutes is created to read:
4 440.08 **(2)** (a) 15s. Bail recovery agent: September 1 of each even-numbered
5 year.

6 **SECTION 8.** Subchapter II (title) of chapter 440 [precedes 440.26] of the statutes
7 is amended to read:

CHAPTER 440

SUBCHAPTER II

PRIVATE DETECTIVES, PRIVATE

SECURITY PERSONS, BAIL BONDAGENTS, AND BAIL RECOVERY AGENTS

13 **SECTION 9.** 440.28 of the statutes is created to read:

14 **440.28 Definitions.** In this section and ss. 440.281 to 440.289:

15 **(1)** “Bail bond” means a bond executed under ch. 969.

16 **(2)** “Bail bond agency” means an entity that is compensated to act as a surety
17 for a bail bond under ch. 969.

18 **(3)** “Bail bond agent” means an individual who is compensated to act as a surety
19 for a bail bond under ch. 969.

20 **(4)** “Bail recovery agent” means an individual who is compensated to locate,
21 apprehend, transport, or surrender a principal.

22 **(5)** “Business” means a sole proprietorship, partnership, limited liability
23 company, joint venture, or corporation.

24 **(6)** “Business representative” means an owner, officer, director, manager,
25 member, partner, or other principal of a business.

BILL

1 (7) “Certified bail recovery agent” means an individual who is certified under
2 s. 440.282 (3).

3 (8) “Law enforcement officer” has the meaning given in s.165.85 (2) (c).

4 (9) “Licensed agency” means a business that is licensed under s. 440.282 (2).

5 (10) “Licensed agent” means an individual who is licensed under s. 440.282 (1).

6 (11) “Principal” means a defendant who is released on a bail bond under ch.
7 969.

8 **SECTION 10.** 440.281 of the statutes is created to read:

9 **440.281 License required. (1) BAIL BOND AGENTS AND AGENCIES.** (a) No
10 individual may act as a bail bond agent in this state unless the individual is a licensed
11 agent and the bail bond is underwritten by a surety company authorized to do
12 business in this state.

13 (b) No business may act as a bail bond agency in this state unless the business
14 is a licensed agency and the bail bond is underwritten by a surety company
15 authorized to do business in this state.

16 **(2) BAIL RECOVERY AGENTS.** Except as provided in s. 440.289 (1) (c), no individual
17 may act as a bail recovery agent in this state unless the individual is a certified bail
18 recovery agent.

19 **SECTION 11.** 440.282 of the statutes is created to read:

20 **440.282 Licensure of bail bond agents and agencies; bail recovery**
21 **agent certification. (1) BAIL BOND AGENTS.** The department shall grant a
22 license to act as a bail bond agent to an individual if the department determines
23 that all of the following requirements are met:

24 (a) The individual submits an application for the license to the department
25 on a form prescribed by the department. The application shall include the

BILL

1 individual's name and address, a recent photograph of the individual, and any
2 other information required by the department by rule.

3 (b) The individual satisfies the education, training, and examination
4 requirements established by the department by rule.

5 (c) Subject to ss. 111.321, 111.322, and 111.335, the individual does not have
6 an arrest or conviction record.

7 (d) The individual pays an initial licensure fee of \$1,000.

8 (e) The individual satisfies any other requirements established by the
9 department by rule.

10 **(2) BAIL BOND AGENCIES.** The department shall grant a license to act as a
11 bail bond agency to a business if the department determines that all of the
12 following requirements are met:

13 (a) The business submits an application to the department on a form
14 prescribed by the department. The application shall include the business's name
15 and address, the name and addresses of the business representatives of the
16 business and any bail bond agents who are employed by the business, and any
17 other information required by the department by rule.

18 (b) The business has at least one business representative who is a licensed
19 agent.

20 (c) The business pays the initial credential fee of \$1,000.

21 (d) The business satisfies any other requirements established by the
22 department by rule.

23 **(3) BAIL RECOVERY AGENTS.** The department shall grant a certification to act
24 as a bail recovery agent to an individual if the department determines that all of
25 the following requirements are met:

BILL

1 (a) The individual submits an application for the certification to the
2 department on a form prescribed by the department. The application shall
3 include the individual's name and address, a recent photograph of the individual,
4 and any other information required by the department by rule.

5 (b) The individual is a private detective who is licensed under s. 440.26 (2)

6 (a) 2.

7 (c) The individual satisfies the education, training, and examination
8 requirements established by the department by rule.

9 (d) Subject to ss. 111.321, 111.322, and 111.335, the individual does not have
10 an arrest or conviction record.

11 (e) The individual satisfies any other requirements established by the
12 department by rule.

13 **(4) RENEWAL.** (a) The renewal dates for licenses granted under subs. (1) and
14 (2) and certifications granted under sub. (3) are specified in s. 440.08 (2) (a) 15e.,
15 15m., and 15s. A renewal application shall be submitted to the department on a
16 form prescribed by the department and shall include any information required by
17 the department by rule.

18 (b) The renewal application for a licensed agent or a licensed agency shall
19 include a renewal fee of \$1,000.

20 **SECTION 12.** 440.283 of the statutes is created to read:

21 **440.283 Information concerning licensed agents, licensed agencies,**
22 **and certified bail recovery agents. (1) REGISTER.** The department shall
23 compile and keep current a register of the names and addresses of all licensed
24 agents, licensed agencies, and certified bail recovery agents. The department
25 shall make that register available for public inspection during the times specified

BILL

1 in s. 230.35 (4) (a). The department may also make the register available to the
2 public on a Web site maintained by the department.

3 **(2) REGISTER PROVIDED TO COURT CLERKS.** Annually, the department shall
4 provide a complete copy of the register kept under sub. (1) to the clerk of circuit
5 court in each county.

6 **(3) NOTICE OF DISCIPLINARY ACTION.** The department shall promptly notify
7 the clerk of circuit court in each county concerning any action taken by the
8 department under. s. 440.288 (2) against a licensed agent, licensed agency, or
9 certified bail recovery agent.

10 **SECTION 13.** 440.284 of the statutes is created to read:

11 **440.284 Bond or liability policy required. (1) LICENSED AGENCIES.** Each
12 licensed agency shall file with the department a bond or liability policy, approved
13 by the department, in an amount determined by the department by rule that
14 covers all licensed agents of the agency.

15 **(2) LICENSED AGENTS.** Each licensed agent who is not included under a bond
16 or liability policy under sub. (1) shall file with the department a bond or liability
17 policy, approved by the department, in an amount determined by the department
18 by rule.

19 **SECTION 14.** 440.286 of the statutes is created to read:

20 **440.286 Restriction on business referrals. (1)** No bail bond agent, bail
21 bond agency, or bail recovery agent, and no agent or employee of a bail bond
22 agent, bail bond agency, or bail recovery agent, may, in the course of the business
23 of the bail bond agent, bail bond agency, or bail recovery agent, suggest in any
24 manner that a principal or prospective principal contact or engage the services of
25 any attorney or law firm.

BILL

1 **(2)** No law enforcement officer or other employee of the state or of a city,
2 village, town, or county may suggest in any manner that a defendant contact or
3 engage the services of any bail bond agent or any bail bond agency.

4 **SECTION 15.** 440.287 of the statutes is created to read:

5 **440.287 Advisory committee.** **(1)** The department shall establish and,
6 except as provided under sub. (2) (a) 5., appoint an advisory committee under s.
7 440.042 to advise the department on matters relating to the regulation of bail
8 bond agents, bail bond agencies, and bail recovery agents.

9 **(2)** (a) The committee shall consist of the following 7 members:

- 10 1. One private criminal defense attorney licensed to practice law in this state.
11 2. One current or former law enforcement officer.
12 3. One current or former judge for the circuit court of any county in this state.
13 4. One member of the public who is a citizen of this state and who is not a
14 current or former law enforcement officer.
15 5. One member of the state legislature, who, notwithstanding s. 440.042 (1),
16 shall be nominated by the governor and appointed with the advice and consent of the
17 senate.
18 6. Two representatives of the bail bond industry in this state.

19 (b) The members of the committee shall be appointed for 3–year terms. No
20 member may serve more than 2 consecutive terms.

21 **SECTION 16.** 440.288 of the statutes is created to read:

22 **440.288 Disciplinary proceedings and actions.** **(1)** INVESTIGATIONS
23 AND HEARINGS. Subject to the rules promulgated under s. 440.03 (1), the
24 department may conduct investigations and hearings to determine whether a
25 violation of ss. 440.281 to 440.286 or any rule promulgated under s. 440.289 or a

BILL

1 violation of any other law of this state, any law of another state, or any federal
2 law that substantially relates to the activity of a bail bond agent, bail bond
3 agency, or bail recovery agent has occurred.

4 **(2) PENALTIES.** (a) Subject to the rules promulgated under s. 440.03 (1), the
5 department may reprimand a bail bond agent, bail bond agency, or bail recovery
6 agent or deny, limit, suspend, or revoke a license or certification granted under s.
7 440.282 if the department finds that an applicant for licensure or certification, a
8 licensed agent, licensed agency, or certified bail recovery agent, has done any of
9 the following:

10 1. Intentionally made a material misstatement in an application for a
11 license or license renewal or a certification or certification renewal.

12 2. Advertised in a manner that is false or misleading.

13 3. Obtained or attempted to obtain compensation through fraud or deceit.

14 4. Violated ss. 440.281 to 440.286 or any rule promulgated under s. 440.289
15 or violated any other law of this state, any law of another state, or any federal law
16 that substantially relates to the activity of a bail bond agent, bail bond agency, or
17 bail recovery agent.

18 5. Engaged in unprofessional conduct.

19 (b) In addition to or in lieu of a reprimand or other action under par. (a), the
20 department may establish by rule other penalties, including a forfeiture not to
21 exceed \$5,000 for each violation, for a violation under par. (a).

22 **SECTION 17.** 440.289 of the statutes is created to read:

23 **440.289 Rules.** (1) The department shall promulgate rules necessary to
24 administer ss. 440.28 to 440.288, including rules that do all of the following:

BILL

1 (a) Establish photograph identification requirements for bail bond agents
2 and bail recovery agents.

3 (b) Establish rules of conduct for bail bond agents, bail bond agencies, and
4 bail recovery agents, including rules that do all of the following:

5 1. Prohibit the use or display of badges, shields, or any other similar images
6 or items normally associated with law enforcement officers.

7 2. Require contact with appropriate local law enforcement officers or other
8 officials before an attempt is made to apprehend a principal.

9 3. Establish other requirements concerning the location, apprehension,
10 transportation, and surrender of principals.

11 (c) Establish procedures for the temporary certification in this state of bail
12 recovery agents from other states. The department may enter into reciprocal
13 agreements with other states concerning the activities of bail bond agents, bail
14 bond agencies, and bail recovery agents in the respective states.

15 (d) Establish appropriate education, training, examination, and other
16 requirements for the initial licensure of bail bond agents and the initial
17 certification of bail recovery agents and establish appropriate continuing
18 education, training, and other requirements for the renewal of those licenses and
19 certifications.

20 (2) In promulgating rules under this section, the department shall consult
21 federal law and the laws of other states concerning the licensure requirements that
22 exist under those laws for bail bond agents, bail bond agencies, and bail recovery
23 agents. The department shall attempt to make the requirements it establishes in
24 rules promulgated under this section consistent with those laws.

25 **SECTION 18.** 628.02 (1) (b) 9. of the statutes is created to read:

BILL

1 628.02 (1) (b) 9. A person who is licensed under s. 440.282 (1) or (2) and is acting
2 within the scope of that license.

3 **SECTION 5.** 969.12 (1) of the statutes is repealed.

4 **SECTION 6.** 969.12 (2) of the statutes is amended to read:

5 969.12 (2) A surety under this chapter shall be a natural person, except who
6 is a resident of this state or a surety under s. 345.61 or a bail bond agent or bail bond
7 agency that is licensed under s. 440.282. No surety ~~under this chapter~~ may be
8 compensated for acting as such a surety, except that a bail bond agent or bail bond
9 agency that is licensed under s. 440.282 shall be compensated at a rate of 10 percent
10 of the amount of the bond set.

11 **SECTION 19. Nonstatutory provisions.**

12 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
13 the department of safety and professional services may promulgate the rules
14 required or otherwise authorized under sections 440.28 to 440.289 of the statutes,
15 as created by this act, for the period before the permanent rules become effective, but
16 not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.
17 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
18 is not required to provide evidence that promulgating a rule under this subsection
19 as an emergency rule is necessary for the preservation of the public peace, health,
20 safety, or welfare and is not required to provide a finding of emergency for the rules
21 promulgated under this subsection.

22 **SECTION 20. Effective date.**

23 (1) This act takes effect on first day of the 7th month beginning after
24 publication.

25 **(END)**