

SENATE BILL NO. 273
INTRODUCED BY D. SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING BAIL BONDS; ESTABLISHING THE BAIL FUGITIVE RECOVERY AGENTS ACT; ESTABLISHING LICENSING AND OTHER REQUIREMENTS FOR BAIL BOND AGENTS AND BAIL FUGITIVE RECOVERY AGENTS; REQUIRING A BAIL BOND AGENT OR BAIL FUGITIVE RECOVERY AGENT TO NOTIFY LOCAL LAW ENFORCEMENT PRIOR TO APPREHENDING A DEFENDANT; PROVIDING THAT A PERSON WHO IS LICENSED AS A PRIVATE INVESTIGATOR IS SUBJECT TO THE ACT; EXPANDING THE EXISTING RULEMAKING AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY; AND AMENDING SECTIONS 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-303, 37-60-304, 37-60-405, AND 46-9-510, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **NEW SECTION.** **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Bail Fugitive
16 Recovery Agents Act".

18 **NEW SECTION.** **Section 2. Definitions.** As used in [sections 1 through 6], unless the context clearly
19 requires otherwise, the following definitions apply:

(1) "Bail bond agent" means a surety or a person licensed by the commissioner of insurance pursuant to 33-17-211 as a surety insurance producer under Title 33, chapter 17.

22 (2) "Bail fugitive" means a defendant in a pending criminal case:

23 (a) who has been released from custody under a financially secured appearance, by payment of cash,
24 or by posting another form of bond and who has had that bond declared forfeited;

25 (b) who has violated a bond condition under which apprehension and reincarceration are permitted; or
26 (c) for whom the surety feels insecure in accepting liability as provided in 46-9-401(3).

(3) (a) "Bail fugitive recovery agent" or "bounty hunter" means a person who is licensed under Title 37, chapter 60, and who is either employed by or contracted with a bail bond agent or a surety, and provided with written documentation as described in [section 4(1)], to apprehend, detain, or arrest a bail fugitive for surrender to the appropriate court, detention facility, or peace officer.

1 (b) A bail fugitive recovery agent licensed under Title 37, chapter 60, who is in the course of
2 apprehending, detaining, or arresting a bail fugitive may conduct an investigation as provided in 37-60-101(21)(b)
3 without being licensed as a private investigator.

4 (4) "Surety" means a person or entity who has deposited money or bonds to secure the release of a
5 person charged with a crime or offense.

6
7 **NEW SECTION. Section 3. Who may apprehend, detain, or arrest bail fugitive.** (1) Only a sworn
8 law enforcement officer or bail fugitive recovery agent may apprehend, detain, or arrest a bail fugitive. For a bail
9 bond agent or a surety to apprehend, detain, or arrest a bail fugitive, the bail bond agent or surety must be
10 licensed as a bail fugitive recovery agent.

11 (2) This section does not prohibit an arrest pursuant to 46-6-502 or a surrender under 46-9-401(3) or
12 46-9-510 unless the person arrested is a bail fugitive.

13 (3) A person may not use the title of bail fugitive recovery agent or bounty hunter unless the person is
14 licensed as a bail fugitive recovery agent under Title 37, chapter 60.

15
16 **NEW SECTION. Section 4. Documentation of authority -- out-of-state requirements.** (1) Before
17 apprehending a bail fugitive, a person authorized under [section 3] to apprehend a bail fugitive must have in the
18 person's possession proper documentation of authority to apprehend issued by a bail bond agent or a surety. The
19 documentation must include the following information:

20 (a) the name of the person authorized under [section 3] to apprehend the bail fugitive;

21 (b) the address of the principal office of the person authorized to apprehend the fugitive; and

22 (c) the name and principal business address of the bail bond agency, surety company, or other party
23 employing or contracting with the person authorized to apprehend the fugitive.

24 (2) An out-of-state bail fugitive recovery agent shall, in addition to having the documentation required
25 in subsection (1), notify the board of private security established in 2-15-1781 during the time the out-of-state bail
26 fugitive recovery agent is operating in this state.

27
28 **NEW SECTION. Section 5. Notification of local law enforcement.** (1) Except under exigent
29 circumstances, a person authorized under [section 3] to apprehend a bail fugitive shall, prior to but no more than
30 6 hours before attempting to apprehend the bail fugitive, notify the local police department or sheriff's department

1 of the intent to apprehend a bail fugitive in that jurisdiction. The notification must provide:

2 (a) the name of the person authorized to apprehend a bail fugitive in the jurisdiction; and

3 (b) the name and approximate location of the bail fugitive.

4 (2) If an exigent circumstance arises and prior notification has not been given as provided in subsection

5 (1), the person authorized to apprehend the bail fugitive shall:

6 (a) notify the local police department or sheriff's department immediately after the apprehension;

7 (b) obtain and retain the name or operator number of the employee receiving the notice information; and

8 (c) if requested by the local jurisdiction, submit a detailed explanation of the exigent circumstances within

9 3 working days after the apprehension is made.

10 (3) This section does not preclude a person authorized under [section 3] to apprehend a bail fugitive from

11 making or attempting to make a lawful arrest of a bail fugitive on bond pursuant to 46-9-510. The fact that a bench

12 warrant is not located in or entered into a warrant depository or system may not affect the lawful arrest of a bail

13 fugitive.

14

15 **NEW SECTION. Section 6. Rulemaking.** The board of private security established in 2-15-1781 may

16 adopt rules to implement [sections 1 through 5].

17

18 **Section 7.** Section 37-60-101, MCA, is amended to read:

19 **"37-60-101. Definitions.** As used in this chapter, the following definitions apply:

20 (1) "Alarm response runner" means an individual employed by an electronic security company, a contract

21 security company, or a proprietary security organization to respond to security alarm system signals.

22 (2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the

23 performance of professional duties.

24 (3) "Armed carrier service" means any person or security company who transports or offers to transport

25 under armed private security guard from one place to another any currency, documents, papers, maps, stocks,

26 bonds, checks, or other items of value that require expeditious delivery.

27 (4) "Armed private investigator" means a private investigator who at any time wears, carries, or

28 possesses a firearm in the performance of the individual's duties.

29 (5) "Armed private security guard" means an individual employed by a contract security company or a

30 proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car

1 service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the
2 individual's duties.

3 (6) "Armored car service" means any person or security company who transports or offers to transport
4 under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or
5 other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

6 (7) "Bail bond agent" has the meaning provided in [section 2].

7 (8) "Bail fugitive" has the meaning provided in [section 2].

8 (9) "Bail fugitive recovery agent" has the meaning provided in [section 2]. A bail fugitive recovery agent
9 is not required to be licensed as a private investigator to conduct activities under subsection (21)(b) of this section
10 for the purposes of apprehending, detaining, or arresting a bail fugitive for surrender to the appropriate court,
11 detention facility, or peace officer.

12 (7)(10) "Board" means the board of private security provided for in 2-15-1781.

13 (8)(11) "Branch office" means any office of a licensee within the state, other than its principal place of
14 business within the state.

15 (9)(12) "Contract security company" means any person who undertakes to provide a private security
16 guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual
17 basis to another person who exercises no direction and control over the performance of the details of the services
18 rendered.

19 (10)(13) "Department" means the department of labor and industry provided for in 2-15-1701.

20 (11)(14) (a) "Electronic security company" means a person who sells, installs, services, or maintains a
21 security alarm system and who undertakes to hire, employ, and provide alarm response runners and security
22 alarm installers on a contractual basis to another person who does not exercise direction and control over the
23 performance of the services rendered.

24 (b) The term does not include a person whose primary business is that of a locksmith and who may also
25 install closed-circuit television cameras and battery-operated door devices.

26 (12)(15) "Firearms course" means the course approved by the board and conducted by a firearms
27 instructor.

28 (13)(16) "Firearms instructor" means an individual who has been approved by the board to instruct
29 firearms courses in the use of weapons.

30 (14)(17) "Insurance adjuster" means a person employed by an insurance company, other than a private

1 investigator, who for any consideration conducts investigations in the course of adjusting or otherwise
2 participating in the disposal of any claims in connection with a policy of insurance but who does not perform
3 surveillance activities or investigate crimes against the United States or any state or territory of the United States.

4 (15)(18) "Licensee" means a person licensed under this chapter.

5 (16)(19) "Paralegal" or "legal assistant" means a person qualified through education, training, or work
6 experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily
7 but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law
8 offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court
9 authority to perform this work.

10 (17)(20) "Person" means an individual, firm, company, association, organization, partnership, or
11 corporation.

12 (18)(21) "Private investigator" means a person other than an insurance adjuster who for any
13 consideration makes or agrees to make any investigation with reference to:

14 (a) crimes against the United States or any state or territory of the United States;
15 (b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency,
16 loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;
17 (c) the location, disposition, or recovery of lost or stolen property;
18 (d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or
19 (e) gathering evidence to be used before any court, board, officer, or investigating committee.

20 (19)(22) "Private security guard" means an individual employed or assigned duties to protect a person
21 or property or both a person and property from criminal acts and whose duties or any portion of whose duties
22 include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private
23 property or the direction of the movements of the public in public areas.

24 (20)(23) "Process server" means a person described in 25-1-1101(1).

25 (21)(24) "Proprietary security organization" means any person who employs a private security guard,
26 alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis
27 solely for the purposes of that person and exerts direction and control over the performance of the details of the
28 service rendered.

29 (22)(25) "Resident manager" means the person appointed to exercise direct supervision, control, charge,
30 management, or operation of each office located in this state where the business of the licensee is conducted.

1 ~~(23)~~(26) (a) "Security alarm installer" means an individual who sells, installs, services, or maintains
2 security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is
3 employed by an electronic security company.

4 (b) The term does not include a person whose primary business is that of a locksmith and who may also
5 install closed-circuit television cameras and battery-operated door devices.

6 ~~(24)~~(27) (a) "Security alarm system" means an assembly of equipment and devices or a single device
7 or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion,
8 movement, or criminal acts at a location.

9 (b) The term does not include systems that monitor temperature, humidity, or any other atmospheric
10 condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

11 ~~(25)~~(28) "Security company" means an electronic security company, a proprietary security organization,
12 or a contract security company.

13 ~~(26)~~(29) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other
14 method of transportation using public streets, thoroughfares, or property in the performance of the person's duties
15 and responsibilities.

16 ~~(27)~~(30) "Unarmed private investigator" means a private investigator who does not wear, carry, or
17 possess a firearm in the performance of the individual's duties.

18 ~~(28)~~(31) "Unarmed private security guard" means an individual who is employed by a contract security
19 company or a proprietary security organization, whose duty or any portion of whose duty is that of a private
20 security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess
21 a firearm in the performance of those duties."

22

23 **Section 8.** Section 37-60-103, MCA, is amended to read:

24 **"37-60-103. Purpose.** The purpose of this chapter is to increase the levels of integrity, competency, and
25 performance of security companies and their employees who are required to be licensed, firearms instructors,
26 private investigators, bail fugitive recovery agents, and process servers to safeguard the public health, safety,
27 and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed
28 employees, firearms instructors, private investigators, or process servers."

29

30 **Section 9.** Section 37-60-202, MCA, is amended to read:

1 **"37-60-202. Rulemaking power.** The board shall adopt and enforce rules:

2 (1) fixing the qualifications of resident managers, licensees, holders of identification cards, and process
3 servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote
4 and protect the public welfare;

5 (2) establishing, in accordance with 37-1-134, application fees for original licenses and identification
6 cards, and providing for refunding of any fees;

7 (3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and

8 (b) establishing qualification requirements and license fees for branch offices identified in subsection
9 (3)(a);

10 (4) for the certification of private investigator, private security guard, security alarm installer, ~~and~~ alarm
11 response runner, ~~and~~ bail fugitive recovery agent training programs, including the certification of firearms training
12 programs;

13 (5) for the licensure of firearms instructors;

14 (6) for the approval of weapons;

15 (7) requiring licensees, except process servers, to file an insurance policy with the board; and

16 (8) providing for the issuance of probationary identification cards for private investigators and security
17 alarm installers who do not meet the requirements for age, employment experience, or written examination."

19 **Section 10.** Section 37-60-301, MCA, is amended to read:

20 **"37-60-301. License required -- process server registration required.** (1) (a) Except as provided in
21 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract
22 security company, a proprietary security organization, an electronic security company, a branch office, a private
23 investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms
24 instructor, ~~or~~ a private security guard, ~~or~~ a bail fugitive recovery agent without having first obtained a license from
25 the board.

26 (b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of
27 a process server for more than 10 services of process in a calendar year without being issued a certificate of
28 registration by the board.

29 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the
30 person is licensed as a contract security company, a proprietary security organization, an electronic security

1 company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident
2 manager, a certified firearms instructor, or a private security guard, or a bail fugitive recovery agent.

3 (3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be
4 licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential
5 intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

6 (4) A person who knowingly engages an unlicensed contract security company, proprietary security
7 organization, electronic security company, branch office, private investigator, security alarm installer, alarm
8 response runner, resident manager, certified firearms instructor, or private security guard, or bail fugitive recovery
9 agent is guilty of a misdemeanor punishable under 37-60-411.

10 (5) A bail bond agent, a surety, or a person licensed as a private investigator may not apprehend, detain,
11 or arrest a bail fugitive unless licensed as a bail fugitive recovery agent under this chapter."

12

13 **Section 11.** Section 37-60-303, MCA, is amended to read:

14 **"37-60-303. License or registration qualifications.** (1) Except as provided in subsection (7)(a), an
15 applicant for licensure under this chapter or an applicant for registration as a process server under this chapter
16 is subject to the provisions of this section and shall submit evidence that the applicant:

17 (a) is at least 18 years of age;

18 (b) is a citizen of the United States or a legal, permanent resident of the United States;

19 (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal
20 use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

21 (d) has not been judicially declared incompetent by reason of any mental disease or disorder or, if so
22 declared, has been fully restored;

23 (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

24 (f) is of good moral character; and

25 (g) has complied with other experience qualifications as may be set by the rules of the board.

26 (2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private
27 security guard, security alarm installer, or alarm response runner, or bail fugitive recovery agent shall:

28 (a) complete the requirements of a training program certified by the board and provide, on a form
29 prescribed by the department, written notice of satisfactory completion of the training; and

30 (b) (i) disclose any convictions for a felony or any violent crime in any jurisdiction;

1 (ii) disclose any court order issued by a court pursuant to a finding of partner or family member assault,
2 stalking, or other offense involving bodily harm or threat of bodily harm to an individual; and

3 (iii) if any disclosures are made under subsection (2)(b)(i) or (2)(b)(ii), submit evidence that the applicant:
4 (A) for a disclosure under subsection (2)(b)(i), is not under state supervision in any jurisdiction following
5 conviction for a felony or any violent crime;

6 (B) for a disclosure under subsection (2)(b)(ii), is not subject to a court order issued by a court of any
7 jurisdiction pursuant to a finding of partner or family member assault, stalking, or other offense involving bodily
8 harm or threat of bodily harm to an individual; and

9 (b)(c) fulfill other requirements as the board may by rule prescribe.

10 (3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a
11 private investigator shall submit evidence under oath that the applicant:

12 (a) is at least 21 years of age;

13 (b) has at least a high school education or the equivalent;

14 (c) has not been dishonorably discharged from any branch of the United States military service; and

15 (d) has fulfilled any other requirements as the board may by rule prescribe.

16 (4) The board may require an applicant to demonstrate by written examination additional qualifications
17 as the board may by rule require.

18 (5) An applicant for a license as a private security patrol officer, or a private investigator, or a bail fugitive
19 recovery agent who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit
20 written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board,
21 as the board may by rule prescribe.

22 (6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a
23 background investigation of each applicant for licensure or registration under this chapter that includes a
24 fingerprint check by the Montana department of justice and the federal bureau of investigation.

25 (7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity
26 that intends to engage in business governed by the provisions of this chapter must be incorporated under the
27 laws of this state or qualified to do business within this state and must be licensed by the board or, if doing
28 business as a process server, must be registered by the board.

29 (b) Individual employees, officers, directors, agents, or other representatives of an entity described in
30 subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant

1 to the requirements of this part or, if doing business as a process server, must be registered by the board.

2 (8) Pursuant to 37-1-203, an applicant who has a history of criminal convictions has the opportunity to
3 demonstrate to the board that the applicant is sufficiently rehabilitated to warrant public trust, and if the board
4 determines that the applicant is not, the license may be denied."

5

6 **Section 12.** Section 37-60-304, MCA, is amended to read:

7 **"37-60-304. Licenses and registration -- application form and content.** (1) An application for a
8 license or for a certificate of registration as a process server must be submitted to the department and
9 accompanied by the application fee set by the board.

10 (2) An application must be made under oath and must include:

11 (a) the full name and address of the applicant;

12 (b) the name under which the applicant intends to do business;

13 (c) a statement as to the general nature of the business in which the applicant intends to engage;

14 (d) a statement as to whether the applicant desires to be licensed as a contract security company, a
15 proprietary security organization, an electronic security company, a branch office, a certified firearms instructor,
16 a private investigator, a security alarm installer, an alarm response runner, a resident manager, or a private
17 security guard, or a bail fugitive recovery agent or registered as a process server;

18 (e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type
19 prescribed by the department, and one classifiable set of the applicant's fingerprints;

20 (f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to
21 37-60-303(7)(a); and

22 (g) other information, evidence, statements, or documents as may be prescribed by the rules of the
23 board.

24 (3) The board shall verify the statements in the application.

25 (4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration
26 to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana
27 department of justice and the federal bureau of investigation."

28

29 **Section 13.** Section 37-60-405, MCA, is amended to read:

30 **"37-60-405. Approval of weapons.** The weapons to be carried by armed licensees or holders of

1 identification cards as private security personnel, or private investigators, or bail fugitive recovery agents licensed
2 under this chapter must be approved by the board."

3

4 **Section 14.** Section 46-9-510, MCA, is amended to read:

5 **"46-9-510. Surrender of defendant.** (1) At any time before the forfeiture of bail or within 90 days after
6 forfeiture:

7 (a) the defendant may surrender to the court or any peace officer of this state; or
8 (b) the surety company licensed as a bail fugitive recovery agent under Title 37, chapter 60, or acting
9 through a licensed bail fugitive recovery agent may arrest the defendant and surrender the defendant to the court,
10 any peace officer, or any detention center facility of this state.

11 (2) The peace officer or detention center facility shall detain the defendant in custody as upon
12 commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the
13 defendant. The court shall then order the bail exonerated."

14

15 **NEW SECTION. Section 15. Codification instruction.** [Sections 1 through 6] are intended to be
16 codified as an integral part of Title 46, chapter 9, and the provisions of Title 46, chapter 9, apply to [sections 1
17 through 6].

18

- END -