

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2561/P1dn
MPG:med:ph

November 11, 2011

Representative Krug:

Please review this draft carefully to ensure that it is consistent with your intent.

This draft creates licensure requirements for commercial bail bond agents and bail bond agencies and creates a certification requirement for bail recovery agents. I have a few comments and questions:

1. Please note that, based on the original draft, which was a budget amendment draft, the initial licensure fee for an agent or an agency is \$1,000, and the renewal fee, which under the draft must be paid annually, is also \$1,000. These fees must be paid by a licensed bail bond agent whether or not the agent is affiliated with a licensed bail bond agency. Are these provisions consistent with your intent? As a reference, licenses are normally renewed, and renewal fees paid, every two years, not every year, and the Department of Safety and Professional Services (DSPS) normally establishes all licensing fees without the specific amounts being set forth in the statutes. Please let me know how you would like to proceed.
2. Note that there are no fee requirements in the draft for certified bail recovery agents. Please let me know if you want to include fees for certified bail recovery agents and whether you want to authorize DSPS to set the fee amounts, as is the usual practice, or want to state the specific fee amounts in the statutes.
3. Also with respect to certified bail recovery agents, note that the draft includes an annual renewal requirement, consistent with the provisions for bail bond agents and bail bond agencies based on the original budget amendment draft. Please let me know if you want to establish biennial renewal, as is the usual practice. Significantly, the renewal date for a private detective is September 1 of each even-numbered year. Under the draft, only a licensed private detective may be a certified bail recovery agent. (Licensed bail bond agents can perform the functions of a bail recovery agent without being required to get certified.) It might make sense to have the renewal date for certification as a bail recovery agent coincide with the renewal date for the private detective's license. Please let me know how you would like to proceed.
4. The draft requires that each licensed bail bond agent or licensed bail bond agency file a bond or liability policy with DSPS. The draft does not establish a specific amount for the bond or liability policy but instead directs DSPS to establish the amounts by

rule. We discussed tracking the requirements for private detectives. However, the requirements for private detectives are dissimilar in that a private detective license may only be issued to a person who is a principal or employee of a private detective agency. The bonding/liability insurance requirement is \$100,000 for the private detective agency and \$2,000 for each private detective. Conversely, it is my understanding that your intent is to allow bail bond agents to either operate as a principal or employee of a bail bond agency or operate independently as an individual bail bond agent, which would seem to indicate the need for a bond/liability policy amount that is higher than \$2,000 for bail bond agents not covered under an agency policy. Also, it makes sense to allow DSPS to establish rules that set different rates depending on the size of a bail bond agency and whether or not the bail bond agents engage in bail recovery activities. If instead you wish to establish specific bonding and liability policy amounts in the draft, please let me know.

5. Because there are already bonding and liability insurance requirements for private detectives, I did not include any such provision in the draft for bail recovery agents. Please let me know if you want to include a provision for bail recovery agents in addition to the existing requirements for private detectives.

6. As we discussed, under current law, DSPS may appoint advisory committees to advise DSPS regarding the various professions DSPS directly regulates. This draft includes a requirement that DSPS appoint such a committee concerning regulation of bail bond agents, bail bond agencies, and bail recovery agents. Is that consistent with your intent? Do you want to include any requirements in the draft regarding the make-up of the committee?

7. Based on the original budget amendment draft, the draft authorizes DSPS to promulgate rules setting forth specific penalties, including forfeitures, for violations of the law regarding bail bond agents, bail bond agencies, and bail recovery agents. Is that consistent with your intent, or do you want to include specific penalties or ranges of penalties in the draft? Also, the draft does not include specific provisions, including penalties, for persons who practice as a bail bond agent, bail bond agency, or bail recovery agent without the proper license or certification. Do you want to include such provisions in the draft? As a reference, see s. 440.26 (8), relating to private detective licenses.

8. The draft includes a six-month delayed effective date to allow DSPS to begin drafting rules and implementing and otherwise prepare the program. Do you also want to include a nonstatutory provision that would authorize DSPS to promulgate emergency rules?

9. Finally, for this draft, I have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 2011-12 and 2012-13. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

Please let me know if you have any questions about this drafter's note or the draft.

Thank you.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov