

ASSEMBLY BILL

No. 2854

Introduced by Assembly Member Dymally

February 24, 2006

An act to amend Section 1810.7 of, and to add Section 1810.8 to, the Insurance Code, and to add Sections 1276.7 and 1276.8 to the Penal Code, relating to bail bonds.

LEGISLATIVE COUNSEL'S DIGEST

AB 2854, as introduced, Dymally. Insurance: bail bonds.

Existing law requires that in order to qualify to take the examination required to be licensed to undertake the execution of bail bonds, an applicant must have completed not less than 12 hours of pretest classroom instruction on specified topics.

This bill would increase the number of pretest classroom instruction hours from 12 hours to 80 hours. This bill would also require that before a person could take the examination that he or she first complete a 40-hour preclicensing bail course provided by an entity approved by the Insurance Commissioner, as specified, and a 40-hour course provided by an entity certified by the Peace Officers Standards and Training, as specified.

Existing law generally regulates undertaking of execution of bail bonds.

This bill would provide that no person who holds a bail license shall execute an undertaking of bail unless the full premium due pursuant to the rate filing of the underwriting surety insurer is collected in full, or a written premium payment agreement, as specified, for the unpaid premium due is entered. The bill would further provide penalties for the violation of this provision.

Existing law does not prohibit the rebating of bail bond premiums.

This bill would provide that bail bond premiums may be rebated only under the circumstances specified including a requirement that bail be exonerated. The bill would further provide penalties for the violation of this provision.

This bill would provide that its provisions are severable and that if any of its provisions are held invalid, the remainder can be given effect without the invalid provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1810.7 of the Insurance Code is
2 amended to read:

3 1810.7. (a) In order to be eligible to take the examination
4 required to be licensed under this chapter, the applicant shall
5 have completed not less than ~~12~~ 80 hours of classroom education
6 in subjects pertinent to the duties and responsibilities of a bail
7 licensee, including, but not limited to, all laws and regulations
8 related thereto, rights of the accused, ethics, and apprehension of
9 bail fugitives. Additionally, a licensee shall complete annually
10 not less than six hours of continuing education in these subjects
11 prior to renewal of his or her license.

12 (b) The commissioner shall approve or disapprove an
13 applicant to provide education for licensure as required by this
14 section within 90 days of receipt of the applicant’s full and
15 complete application. However, this 90-day period shall be tolled
16 during the pendency of any investigation of the applicant by the
17 commissioner for an alleged violation that would, if proven,
18 result in the suspension, revocation, or denial of the provider’s
19 approval to provide continuing education to bail agents as
20 prescribed in Section 1813. Failure to disapprove an applicant
21 within this period shall result in the automatic approval of the
22 application. Approval shall be valid for two years. The
23 commissioner may, at any time, disapprove any provider who is
24 not qualified or whose course outlines are not approved, who is
25 not of good business reputation, or who is lacking in integrity,
26 honesty, or competency. A provider shall not provide education
27 for licensure following the expiration of the two-year approval
28 period unless the commissioner has renewed the provider’s

1 approval. The commissioner shall, at the time of renewal,
2 approve or disapprove the course outlines and schedule of classes
3 to be provided.

4 (c) Providers responsible for providing education for licensure
5 under this chapter shall consult with the California State Sheriffs'
6 Association, the California District Attorneys Association, and
7 the County Counsels Association of California prior to
8 submission of the course outlines for approval by the
9 commissioner, and these entities may respond within 30 days of
10 receipt of a request for consultation from a provider. Providers
11 shall maintain records of their requests for consultation and any
12 responses from these entities, and make these records available to
13 the department for review as requested. The bail license fee shall
14 be increased, the amount of which shall be determined by the
15 commissioner, which shall be deposited in the Insurance Fund
16 for the purposes of recovering the administrative costs for
17 meeting the conditions and purposes of this section. Providers of
18 education or continuing education shall offer courses to all
19 applicants at the same course fees.

20 (d) Any person who falsely represents to the commissioner
21 that compliance with this section has been met shall be subject,
22 after notice and hearing, to the penalties and fines set out in
23 Section 1814.

24 (e) A licensee shall not be required to comply with the
25 continuing education requirements of this section if the licensee
26 submits proof satisfactory to the commissioner that he or she has
27 been a licensee in good standing for 30 continuous years in this
28 state and is 70 years of age or older.

29 (f) The commissioner may make reasonable rules and
30 regulations necessary, advisable, and convenient for the
31 administration and enforcement of this chapter. The rules and
32 regulations may include a schedule establishing fees to be paid
33 by an applicant seeking approval to act as a provider and to
34 deliver courses under this section. Those fees shall be in an
35 amount no greater than fees paid by applicants providing similar
36 courses to other insurance agents licensed by the department, as
37 specified in Section 1751.1.

38 (g) Nothing in this chapter shall preclude completion of the
39 bail agent continuing education requirements of this section
40 through a course of instruction offered via the Internet or

1 correspondence. However, this subdivision shall not be construed
 2 to allow completion of the prelicensing education requirements
 3 of this section through such a course of instruction.

4 (h) Successful completion of the continuing education
 5 requirements by means of an Internet or correspondence course
 6 shall require obtaining a passing grade of at least 70 percent on a
 7 written final examination. The final examination shall be open
 8 book and shall be graded by the approved provider. The provider
 9 shall issue certificates of completion only to those students who
 10 have passed the final examination.

11 (i) No Internet or correspondence continuing education course
 12 shall be provided pursuant to this section prior to April 1, 2006.
 13 However, this subdivision shall not prohibit an approved
 14 provider from advertising or promoting a course prior to that
 15 date.

16 SEC. 2. Section 1810.8 is added to the Insurance Code, to
 17 read:

18 1810.8. In order to be eligible for licensing examination
 19 under this chapter, the applicant for licensure as a bail agent,
 20 solicitor or permittee shall first complete a 40-hour prelicensing
 21 bail course provided by an entity approved by the commissioner
 22 pursuant to subdivisions (b) and (c) of Section 1810.7, and a
 23 40-hour P.O.S.T. arrest powers and procedures class pursuant to
 24 Section 832 of the Penal Code, offered by a P.O.S.T. approved
 25 provider.

26 (a) In order to be approved as a prelicensing provider of
 27 education for licensure, in addition to the requisites of
 28 subdivision (b) of Section 1810.7, the provider must offer a
 29 minimum of two 40-hour classroom instruction basic bail
 30 certification courses of approved content per calendar year. The
 31 40-hour course on power of arrest which is certified by the
 32 Commission on Peace Officer Standards and Training (P.O.S.T.)
 33 pursuant to Section 832 of the Penal Code, may be obtained from
 34 any P.O.S.T. approved provider.

35 (b) The 40 hours of classroom instruction involving bail
 36 curriculum shall be structured and presented as follows:

- 37 (1) Overview: Function of Bail Agents-two hours.
- 38 (2) Insurance and Regulatory Codes-six hours.
- 39 (3) Applicable Penal Code Provisions-four hours.
- 40 (4) Code of Ethics; Duties to Clients, etc.-four hours.

- 1 (5) Fiduciary Duties of the Bail Agent-two hours.
- 2 (6) Criminal and Courtroom Procedures-four hours.
- 3 (7) Special Obligations to the Court-two hours.
- 4 (8) Laws of Bail Forfeiture Section 1305 of the Penal
- 5 Code-four hours.
- 6 (9) Collateralizing Bail Undertakings-four hours.
- 7 (10) Fugitive Location Methods and Resources-four hours.
- 8 (11) Interaction with Police and Prosecutors-four hours.
- 9 (c) Prior to providing the above curriculum, any potential
- 10 education provider under this section shall submit a detailed
- 11 prelicensing course curriculum following the mandates of
- 12 subdivision (b), inclusive, for approval by the commissioner. In
- 13 addition to describing course content in detail under the 11 study
- 14 topics, and providing a tentative faculty schedule for the classes,
- 15 the provider shall submit comprehensive background statements
- 16 or curriculum vitae for the supervising instructor and all
- 17 identified instructors to the commissioner with the provider's
- 18 application for approval to provide instruction.
- 19 (d) The minimum qualifications for a supervising instructor
- 20 under this section are:
- 21 (1) An active status judge or court commissioner of this state.
- 22 (2) An active status member of the State Bar who has been so
- 23 licensed for five or more years.
- 24 (3) A licensed bail agent of this state who has been so licensed
- 25 for five or more years in good standing.
- 26 (4) As to courses specified in subdivision paragraphs (10) and
- 27 (11) of subdivision (b), a current holder of a Private
- 28 Investigator's license issued by the Department of Consumer
- 29 Affairs, which has been in force for an uninterrupted period of
- 30 five years or a sworn peace officer of this state with at least five
- 31 years of uninterrupted peace officer status.
- 32 (e) Each course shall have a designated supervising instructor,
- 33 approved by the commissioner as an instructor, who shall be
- 34 present at all classes conducted by the provider, whether or not
- 35 he or she is instructing. Additionally, the supervising instructor is
- 36 responsible for all of the following:
- 37 (1) Taking roll of attendees at the start of the morning and
- 38 afternoon class sessions, and again at the end of the afternoon
- 39 session;

1 (2) Obtaining department approval of all instructors and
2 maintaining the schedule of instruction.

3 (3) Approving all “guest lecturers” who may be utilized by the
4 provider during any given courses, and recording the amount of
5 time the guest lecturer was utilized.

6 (4) Assuring proper coursework is presented for the periods
7 called for in this section, and that the instructor properly and
8 accurately presents the subject matter in a cohesive and
9 understandable manner.

10 (5) Completing all required forms and certificates to certify to
11 the commissioner the names of those attendees who successfully
12 completed the coursework.

13 (f) Any supervising instructor, instructor, or lecturer who
14 teaches any coursework under this section for six or more hours
15 in a calendar year shall qualify for the same number of hours in
16 “continuing education” classroom hours towards the educational
17 mandate for his or her bail license renewal.

18 SEC. 3. Section 1276.7 is added to the Penal Code, to read:

19 1276.7. (a) No person who holds a bail license shall execute
20 an undertaking of bail unless: (1) the full premium due pursuant
21 to the rate filing of the underwriting surety insurer is collected in
22 full, or (2) a written premium payment agreement for the unpaid
23 premium due is entered. The premium payment agreement shall
24 set forth the schedule of payments due and be signed by a bail
25 bond licensee and the person responsible for paying the
26 premium.

27 (b) The repayment term of the premium payment agreement
28 may not exceed the following time periods:

29 (1) Six months from the date of execution of the undertaking
30 of bail in all cases where there is no recorded deed of trust on
31 real property securing the extension of credit.

32 (2) Two years from the date of execution of the undertaking of
33 bail in all cases where there is a recorded deed of trust on real
34 property securing the extension of credit.

35 (c) The original of the premium payment agreement shall be
36 retained by the bail licensee and a copy shall be provided to the
37 person responsible for paying the premium. The bail licensee
38 shall use good faith efforts to collect all amounts due pursuant to
39 the terms of the premium payment agreement.

1 (d) The Insurance Commissioner shall impose a fine of up to
2 five thousand dollars (\$5,000) on any bail licensee for first
3 violation of this section, suspension for up to 30 days for a
4 second violation of this section, and revocation of the bail
5 licensee's license for a third violation of this section.

6 SEC. 4. Section 1276.8 is added to the Penal Code, to read:

7 1276.8. (a) A rebate to a consumer in a bail bond transaction
8 shall only be made under the following conditions:

9 (1) A written agreement providing the details of the rebate is
10 executed by the bail licensee. The original of the rebate
11 agreement shall be retained by the bail licensee and a copy shall
12 be provided to the consumer.

13 (2) The consumer shall pay the full bail bond premium as
14 provided in the filed rate of the surety insurer prior to the release
15 of the defendant from custody.

16 (3) The rebate shall only be paid to the consumer after the bail
17 bond is exonerated and only if the surety insurer or its agents
18 have suffered no pecuniary loss on the bail bond.

19 (4) The commissioner shall impose a fine of up to five
20 thousand dollars (\$5,000) on any bail licensee and the
21 supervising agent or agency for each violation of this section. In
22 the case of multiple violations of this section, the commissioner
23 may suspend the license of the licensee and the supervising agent
24 or agency for up to 30 days or may revoke the bail licensee's and
25 supervising agent or agencies license.

26 (b) The provisions of law relating to unlawful rebates shall not
27 apply to commissions or consideration paid or exchanged
28 between licensees under this chapter. However, the licensee who
29 executes the undertaking or executes or delivers the bail bond
30 shall, in all matters in respect thereto, be deemed in the principal
31 and all licensees otherwise connected with the transactions shall
32 be deemed the principal's agents in respect thereto.

33 SEC. 5. The provisions of this bill are severable. If any
34 provision of this bill or its application is held invalid, that
35 invalidity shall not affect other provisions or applications that can
36 be given effect without the invalid provision or application.