

BAIL REFORM

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

AN ACT RELATING TO INSURANCE AND JUDICIAL PROCEDURE; MOVING THE ADMINISTRATION OF BAIL BOND SURETIES FROM THE COURTS TO THE INSURANCE DEPARTMENT, AND PROVIDING DEFINITIONS AND PROCEDURES FOR ADMINISTRATION; PROVIDING COURT DISCRETION TO IMPOSE REASONABLE CONDITIONS OF PRETRIAL RELEASE; AND REVISING PROCEDURES FOR BAIL FORFEITURE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 31A-2-203**, as last amended by Chapter 316, Laws of Utah 1994
- 31A-2-308**, as last amended by Chapter 316, Laws of Utah 1994
- 31A-4-102**, as last amended by Chapter 20, Laws of Utah 1995
- 31A-23-102**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-23-204**, as last amended by Chapter 316, Laws of Utah 1994
- 31A-23-219**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 31A-23-305**, as last amended by Chapter 204, Laws of Utah 1986
- 31A-23-401**, as last amended by Chapter 204, Laws of Utah 1986
- 31A-23-404**, as last amended by Chapter 185, Laws of Utah 1997
- 77-20-1**, as last amended by Chapter 252, Laws of Utah 1996
- 77-20-3**, as enacted by Chapter 15, Laws of Utah 1980
- 77-20-4**, as enacted by Chapter 15, Laws of Utah 1980
- 77-20-5**, as last amended by Chapter 130, Laws of Utah 1994
- 77-20-7**, as enacted by Chapter 15, Laws of Utah 1980

ENACTS:

- 31A-23-211.5**, Utah Code Annotated 1953
- 31A-35-101**, Utah Code Annotated 1953

31A-35-102, Utah Code Annotated 1953
31A-35-103, Utah Code Annotated 1953
31A-35-104, Utah Code Annotated 1953
31A-35-201, Utah Code Annotated 1953
31A-35-202, Utah Code Annotated 1953
31A-35-301, Utah Code Annotated 1953
31A-35-401, Utah Code Annotated 1953
31A-35-402, Utah Code Annotated 1953
31A-35-403, Utah Code Annotated 1953
31A-35-404, Utah Code Annotated 1953
31A-35-405, Utah Code Annotated 1953
31A-35-406, Utah Code Annotated 1953
31A-35-407, Utah Code Annotated 1953
31A-35-501, Utah Code Annotated 1953
31A-35-502, Utah Code Annotated 1953
31A-35-503, Utah Code Annotated 1953
31A-35-601, Utah Code Annotated 1953
31A-35-602, Utah Code Annotated 1953
31A-35-603, Utah Code Annotated 1953
31A-35-604, Utah Code Annotated 1953
31A-35-605, Utah Code Annotated 1953
31A-35-606, Utah Code Annotated 1953
31A-35-607, Utah Code Annotated 1953
31A-35-608, Utah Code Annotated 1953
31A-35-701, Utah Code Annotated 1953
31A-35-702, Utah Code Annotated 1953
31A-35-703, Utah Code Annotated 1953
31A-35-704, Utah Code Annotated 1953

77-20b-101, Utah Code Annotated 1953

77-20b-102, Utah Code Annotated 1953

77-20b-103, Utah Code Annotated 1953

77-20b-104, Utah Code Annotated 1953

REPEALS:

77-20-11, as last amended by Chapter 215, Laws of Utah 1997

77-20-12, as enacted by Chapter 130, Laws of Utah 1994

77-20-13, as enacted by Chapter 130, Laws of Utah 1994

77-20a-1, as last amended by Chapter 79, Laws of Utah 1996

77-20a-2, as enacted by Chapter 54, Laws of Utah 1983

77-20a-3, as enacted by Chapter 54, Laws of Utah 1983

77-20a-4, as enacted by Chapter 54, Laws of Utah 1983

77-20a-5, as enacted by Chapter 54, Laws of Utah 1983

77-20a-6, as enacted by Chapter 54, Laws of Utah 1983

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-2-203** is amended to read:

31A-2-203. Examinations and alternatives.

(1) (a) Whenever the commissioner considers it necessary in order to inform himself about any matter related to the enforcement of this title, the commissioner may examine the affairs and condition of:

(i) a licensee under this title;

(ii) an applicant for a license under this title;

(iii) a person or organization of persons doing or in process of organizing to do an insurance business in this state; or

(iv) a person who is not, but should be, licensed under this title.

(b) When reasonably necessary for an examination under Subsection (1)(a), the commissioner may examine the accounts, records, documents, or evidences of transactions of the insurer or other licensee, so far as they relate to the examinee, of any officer or other person who has

executive authority over or is in charge of any segment of the examinee's affairs, or of any affiliate of the examinee.

(c) On demand, each examinee under Subsection (1)(a) shall make available to the commissioner for examination any of its own accounts, records, files, documents, or evidences of transactions and, to the extent reasonably necessary for an examination, those of any persons under Subsection (1)(b). Failure to make these documents available is concealment of records under Subsection 31A-27-307(7). However, if the examinee is unable to obtain accounts, records, files, documents, or evidences of transactions from persons under Subsection (1)(b), that failure is not concealment if the examinee immediately terminates the relationship with the other person.

(d) Neither the commissioner nor an examiner may remove any account, record, file, document, evidence of transaction, or other property of the examinee from the examinee's offices unless the examinee consents in writing or a court grants permission. The commissioner may, however, make and remove copies or abstracts of the account, record, file, document, or evidence of transaction.

(2) (a) The commissioner shall examine every insurer, both domestic and nondomestic, and every licensed rate service organization, as needed and as otherwise required by law. The commissioner shall examine insurers, both domestic and nondomestic, no less frequently than once every five years, but the commissioner may use "in lieu" examinations under Subsection (4) to satisfy this requirement.

(b) The commissioner shall revoke the certificate of authority of an insurer or the license of a rate service organization that has not been examined, or submitted an acceptable "in lieu" report under Subsection (4), within the past five years.

(c) Any 25 persons who are policyholders, shareholders, or creditors of a domestic insurer may by verified petition demand a hearing under Section 31A-2-301 to determine whether the commissioner should conduct an unscheduled examination of the insurer. Persons demanding the hearing shall be given an opportunity in the hearing to present evidence that an examination of the insurer is necessary. If the evidence justifies an examination, the commissioner shall order one.

(d) When the board of directors of a domestic insurer requests that the commissioner

examine the insurer, the commissioner shall examine the insurer as soon as reasonably possible. If the requested examination is conducted within two years after completion of a comprehensive examination by the commissioner, costs of the requested examination may not be deducted from premium taxes under Section 59-9-102 unless the commissioner's order specifically provides for the deduction.

(e) Bail bond surety companies as defined in Section 31A-35-102 are exempted from the five-year examination requirement in Subsection (2)(a), the revocation under Subsection (2)(b), and Subsections (2)(c) and (2)(d).

(3) In lieu of all or part of an examination under Subsections (1) and (2), or in addition to it, the commissioner may order an independent audit or examination by technical experts, including certified public accountants and actuaries. Any audit or evaluation under this Subsection (3) is subject to Subsection (5), Section 31A-2-204, and Subsection 31A-2-205(4).

(4) (a) In lieu of all or any part of an examination under this section, the commissioner may accept the report of an examination made by the insurance department of another state, another government agency in this state, the federal government, or other state.

(b) An examination by the commissioner under Subsection (1) or (2) or accepted by the commissioner under Subsection (4) may use:

- (i) an audit already made by a certified public accountant; or
- (ii) an actuarial evaluation made by an actuary approved by the commissioner.

(5) (a) An examination may be comprehensive or limited with respect to the examinee's affairs and condition. The commissioner shall determine the nature and scope of each examination, taking into account all relevant factors, including:

- (i) the length of time the examinee has been licensed in this state;
- (ii) the nature of the business being examined;
- (iii) the nature of the accounting records available; and
- (iv) the nature of examinations performed elsewhere.

(b) The examination of an alien insurer shall be limited to insurance transactions and assets in the United States, unless the commissioner orders otherwise after finding that extraordinary

circumstances necessitate a broader examination.

(6) To effectively administer this section, the commissioner shall:

(a) maintain an effective financial condition surveillance system, including review of insurance regulatory information system reports;

(b) employ a priority scheduling method that focuses on insurers most in need of examination; and

(c) use examination management techniques similar to those outlined in the Financial Condition Examination Handbook of the National Association of Insurance Commissioners.

Section 2. Section **31A-2-308** is amended to read:

31A-2-308. Enforcement penalties and procedures.

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) (i) The commissioner may order an individual agent, broker, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.

(ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.

(c) (i) The commissioner may order an individual agent, broker, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.

(ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.

(d) The commissioner may accept or compromise any forfeiture under this subsection until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) Whenever a person fails to comply with an order issued under Subsection 31A-2-201(4),

including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) directing compliance with the commissioner's order and restraining further violation of the order, subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of his intention to proceed under Subsection (2)(c). The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment, the commissioner may certify the fact of the failure to the court by affidavit, and the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) The proceeds of all forfeitures under this section, including collection expenses, shall be paid into the General Fund. The expenses of collection shall be credited to the Insurance Department's budget. The attorney general's budget shall be credited to the extent the Insurance Department reimburses the attorney general's office for its collection expenses under this section.

(6) Forfeitures and judgments under this section bear interest at the rate then charged by the United States Internal Revenue Service for past due taxes. Interest accrues from the later of the date of entry of the commissioner's order under Subsection (1) or the date of judgment under Subsection (2) until the forfeiture and accrued interest are fully paid.

(7) No forfeiture may be imposed under Subsection (2)(c) if, at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order, or if the violation of

the order occurred during the order's suspension.

(8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).

(9) A person who intentionally violates, intentionally permits any person over whom he has authority to violate, or intentionally aids any person in violating any insurance statute or rule of this state or any effective order issued under Subsection 31A-2-201(4) is guilty of a class B misdemeanor. Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than \$10,000 if a corporation or not more than \$5,000 if a person other than a corporation. If the person is an individual, the person may, in addition, be imprisoned for up to one year. As used in this subsection, "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) When a licensee of the Insurance Department, other than a domestic insurer, persistently or substantially violates the insurance law or violates an order of the commissioner under Subsection 31A-2-201(4), if there are grounds for delinquency proceedings against the licensee under Section 31A-27-301 or Section 31A-27-307, or if the licensee's methods and practices in the conduct of his business endanger, or his financial resources are inadequate to safeguard, the legitimate interests of his customers and the public, the commissioner may, after a hearing, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority. Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19-303, 31A-19-304, 31A-23-216, 31A-23-217, 31A-25-208, 31A-25-209, 31A-26-213, [and] 31A-26-214, 31A-35-501, and 31A-35-503.

(11) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Section 3. Section **31A-4-102** is amended to read:

31A-4-102. Qualified insurers.

[No person may do] (1) A person may not conduct an insurance business in Utah, either in person, through agents or brokers, or through the mail or any other method of communication, except:

~~[(1)]~~ (a) an insurer authorized to do business in Utah under Title 31A, Chapter 5, 7, 8, 9, 10, 11, 13, or 14, within the limits of its certificate of authority;

~~[(2)]~~ (b) a joint underwriting group under Section 31A-2-214 or 31A-20-102;

~~[(3)]~~ (c) an insurer doing business under Section 31A-15-103;

~~[(4)]~~ (d) a person who, pursuant to Section 31A-1-105, submits to the commissioner a certificate from the United States Department of Labor, or such other evidence as satisfies the commissioner, that the laws of Utah are preempted with respect to specified activities of that person by Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law; or

~~[(5)]~~ (e) A person exempt from the application of the Insurance Code under Section 31A-1-103 and all other applicable statutes.

(2) As used in this section, "insurer" includes a bail bond surety company, as defined in Section 31A-35-102.

Section 4. Section **31A-23-102** is amended to read:

31A-23-102. Definitions.

As used in this chapter:

(1) Except as provided in Subsection (3):

(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.

(b) "Insurance agent" or "agent" means a person who represents an insurer or insurers in soliciting, negotiating, or placing insurance.

(c) "Insurance broker" or "broker" means a broker as defined in Subsection (5) or any other person, firm, association, or corporation, that for any compensation, commission, or any other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than himself or itself.

(d) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.

(e) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(f) "Title marketing representative" means a person who represents a title insurer in soliciting, requesting, or negotiating the placing of title insurance or escrow, settlement, or closing services and who does not have a search or escrow license.

(2) Except as provided in Subsection (3) and Subsection 31A-23-301(1)(b), "insurance consultant" or "consultant" means a person who advises other persons about insurance needs and coverages, who is compensated by the person advised on a basis which is not directly related to the insurance placed, and who is not compensated directly or indirectly by an insurer, agent, or broker for the advice given.

(3) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:

(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of his working time to activities other than those described in Subsections (1), (2), and (3), including the clerical employees of persons required to be licensed under this chapter;

(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;

(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;

(d) a person who, without special compensation, performs incidental services for another at the other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;

(e) (i) a holder of a group insurance policy, or any other person involved in mass marketing, but only with respect to administrative activities in connection with that type of policy, including the collection of premiums; and

(ii) only if the person receives no compensation for the activities described in Subsection (3)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.

(4) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(5) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

(6) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

[(6)] (7) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

[(7)] (8) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

[(8)] (9) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

[(9)] (10) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

[(10)] (11) "Insurer" is defined in Subsection 31A-1-301(48). The following persons or similar persons are not insurers for purposes of Part 6 of this chapter:

(a) all risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq., and Title 31A, Chapter 15, Part 2, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers; for the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

~~[(11)]~~ (12) (a) "Managing general agent" means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and that acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term, and that, with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, and that also either adjusts or pays claims in excess of an amount determined by the commissioner, or that negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection ~~[(11)]~~ (12)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

- (i) an employee of the insurer;
- (ii) a U.S. manager of the United States branch of an alien insurer; or
- (iii) an underwriting manager which, pursuant to contract:
 - (A) manages all the insurance operations of the insurer;
 - (B) is under common control with the insurer;
 - (C) subject to Title 31A, Chapter 16, Insurance Holding Companies; and
 - (D) whose compensation is not based on the volume of premiums written; and
- (c) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

~~[(12)]~~ (13) "Producer" is a person who arranges for insurance coverages between insureds and insurers.

~~[(13)]~~ (14) "Qualified U.S. financial institution" means an institution that:

(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing which are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

~~[(14)]~~ (15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections ~~[(15)]~~ (16) and ~~[(16)]~~ (17).

~~[(15)]~~ (16) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

~~[(16)]~~ (17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office and who acts as an agent for the reinsurer whether he is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection ~~[(16)]~~ (17)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

- (i) an employee of the reinsurer;
- (ii) a U.S. manager of the United States branch of an alien reinsurer;
- (iii) an underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 31A, Chapter 16, Insurance Holding Companies, and whose compensation is not based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

~~[(17)]~~ (18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

~~[(18)]~~ (19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

~~[(19)]~~ (20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 5. Section **31A-23-204** is amended to read:

31A-23-204. License classifications.

Licenses issued under this chapter shall be issued under the classifications described under Subsections (1) through (6). These classifications are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections 31A-23-206 through 31A-23-208.

(1) Agent and broker license classifications include:

(a) life insurance, including nonvariable annuities;

(b) variable annuities;

(c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

(d) property/liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety and other bonds; and

(iv) policies containing any combination of these coverages; and

(e) title insurance under one of the following categories:

(i) search, including authority to act as a title marketing representative;

(ii) escrow, including authority to act as a title marketing representative;

(iii) search and escrow, including authority to act as a title marketing representative; and

(iv) title marketing representative only.

(2) Limited license product classification includes:

(a) credit life and credit disability insurance;

(b) travel; [and]

(c) motor club[-]; and

(d) bail bond agent.

(3) Consultant license classification includes:

(a) life insurance, including nonvariable annuities;

(b) variable annuities;

(c) disability insurance, including contracts issued to policyholders under Chapter 7 or 8;

and

(d) property/liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety and other bonds; and

(iv) policies containing any combination of these coverages.

(4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary to act as a holder of a license under Subsection (2)(a).

(5) Upon satisfying the additional applicable requirements, a holder of a brokers license may obtain a license to act as a surplus lines broker. This type of license gives the holder the authority to arrange insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types of insurance under Subsection (1) for which he holds a brokers license.

(6) The commissioner may by rule recognize other agent, broker, limited license, or consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and (3).

Section 6. Section **31A-23-211.5** is enacted to read:

31A-23-211.5. Special requirements for bail bond agents and bail bond enforcement agents.

(1) As used in this section, "bail bond agent" and "bail enforcement agent" have the same definitions as in Section 31A-35-102.

(2) A bail bond agent may not operate in this state without an appointment from one or more authorized bail bond surety insurers or licensed bail bond surety companies.

(3) A bail bond enforcement agent may not operate in this state without an appointment from one or more licensed bail bond agents.

Section 7. Section **31A-23-219** is amended to read:

31A-23-219. Appointment and listing of insurance agents.

(1) As used in this section, "insurer" includes bail bond surety companies as defined in Section 31A-35-102.

~~[(1)]~~ (2) (a) An insurer shall appoint a natural person or agency that has an insurance agent or managing general agent license to act as an insurance agent on its behalf prior to any agent doing business for the insurer in this state.

(b) All insurers shall report to the commissioner, at intervals and in the form the commissioner establishes by rule, all new appointments and all terminations of appointments.

(c) All insurers shall submit to the commissioner on or before July 1 of each odd-numbered year a list of all agent appointments then in force in this state.

~~[(2)]~~ (3) (a) An insurer shall report to the commissioner the cause of termination of an agent's appointment. The information provided to the commissioner shall remain confidential.

(b) An insurer is immune from civil action, civil penalty, or damages if the insurer complies in good faith with Subsection ~~[(2)]~~ (3) in reporting to the commissioner the cause of termination of agents' appointments. Notwithstanding any other provision in this section, an insurer is not immune from any action or resulting penalty imposed on the reporting insurer as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with Subsection ~~[(2)]~~ (3).

~~[(3)]~~ (4) If an insurer appoints an agency as its agent, the insurer need not appoint, report, or pay appointment reporting fees for natural person agents designated on the agency's agent's license under Section 31A-23-212.

~~[(4)]~~ (5) Each insurer shall maintain with the department, on forms supplied by the department, and signed by the president and secretary of the insurer, a list of natural persons with authority to appoint and remove the company's agents in this state. The insurer shall submit the reports to the commissioner pursuant to Subsection ~~[(1)]~~ (2).

~~[(5)]~~ (6) If an insurer lists a licensee as its agent in reports submitted under Subsection ~~[(1)]~~ (2), there is a rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of the licensee's licensed employees acted as the insurer's agent and not as a broker.

Section 8. Section **31A-23-305** is amended to read:

31A-23-305. Insurer liability.

(1) As used in this section, "insurer" includes bail bond surety companies as defined in Section 31A-35-102.

~~[(1)]~~ (2) There is a rebuttable presumption that every insurer is bound by any act of its agent performed in this state that is within the scope of the agent's actual (express or implied) or apparent authority, until the insurer has canceled the agent's appointment and has made reasonable efforts to recover from the agent its policy forms and other indicia of agency. Reasonable efforts include a formal demand in writing for return of the indicia, and notice to the commissioner if the agent does not promptly comply with the demand. This Subsection (2) neither waives any common law defense available to insurers, nor precludes the insured from seeking redress against the agent individually or jointly against the insurer and agent.

~~[(2)]~~ (3) When a property/liability insurance agent with authority to bind more than one insurer on a particular risk agrees to bind coverage on a particular risk, but fails to outwardly indicate the insurer with which the risk is placed, and before the risk is placed with a particular insurer a loss occurs, if there is no conclusive admissible evidence indicating the insurer with which the agent exercised his binding authority, a court may equitably apportion the loss among all insurers with which the agent had binding authority as to the particular type of risk.

Section 9. Section **31A-23-401** is amended to read:

31A-23-401. Compensation from insureds.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of an agent or broker from:

(i) amounts deducted from insurance premiums on insurance sold by or placed through the agent or broker; or

(ii) amounts received from an insurer, another agent, or a broker, acting in their professional capacities, as a result of the sale or placement of insurance.

(b) "Noncommission compensation" includes all funds paid to or credited for the benefit of an agent or broker other than commission compensation.

(2) (a) Except as provided in Subsection (3), no insurance agent or broker may receive, for acting as an agent or broker, from an insured or from a person purchasing an insurance policy, compensation other than commission compensation.

(b) As used in this section, "acting as an agent or broker" includes the negotiation or procurement of any insurance contract made or negotiated in this state, and thereafter providing any other services on account of that insurance contract, including the adjustment of claims arising from that insurance contract.

(3) Subsection (2) does not apply to:

(a) a broker's receipt of noncommission compensation in connection with the actual sale or placement of insurance, but only if the broker and the insured have agreed on the broker's noncommission compensation, and the broker has disclosed to the insured the existence and source of the commission compensation that accrues to the broker as a result of the transaction, which agreement and disclosure shall be evidenced by:

(i) a written memorandum, signed by the broker and the insured, disclosing the existence and source of commission compensation and providing that the insured will, in addition, pay the noncommission compensation;

(ii) an application for insurance, signed by the insured, that specifies the amount of the broker's noncommission compensation and discloses the existence and source of the commission compensation; or

(iii) the insured's payment of an invoice from the broker for the noncommission

compensation, which invoice discloses the existence and source of the commission compensation received by the broker with respect to the transaction;

(b) compensation received by an agent of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(c) compensation received by an insurance broker who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the broker does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(d) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23-301; or

(e) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23-301 and are not harmful to the public.

(4) This section does not alter the right of any agent or broker to recover from an insured the amount of any premium due for insurance effected by or through that agent or broker or to charge a reasonable rate of interest upon past-due accounts.

(5) This section does not apply to bail bond agents or bail enforcement agents as defined in Section 31A-35-102.

Section 10. Section **31A-23-404** is amended to read:

31A-23-404. Sharing commissions.

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter to act as an agent or broker in Utah as to the particular type of insurance.

(b) A person may only accept commission compensation or other compensation as an agent, broker, or consultant that is directly or indirectly the result of any insurance transaction if that person is licensed under this chapter to act as an agent or broker as to the particular type of insurance.

(2) (a) Except as provided in Section 31A-23-301, a consultant may not pay or receive any

commission or other compensation that is directly or indirectly the result of any insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only with another consultant licensed under this chapter, and only to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement.

(4) In selling any policy of title insurance, no sharing of commissions under Subsection (1) may occur if it will result in an unlawful rebate, or in compensation in connection with controlled business, or in payment of a forwarding fee or finder's fee. A person may share compensation for the issuance of a title insurance policy only to the extent that he contributed to the search and examination of the title or other services connected with it.

(5) This section does not apply to bail bond agents or bail enforcement agents as defined in Section 31A-35-102.

Section 11. Section **31A-35-101** is enacted to read:

CHAPTER 35. BAIL BOND SURETY LICENSING ACT

Part 1. General Provisions

31A-35-101. Title.

This chapter is known as the "Bail Bond Surety Licensing Act."

Section 12. Section **31A-35-102** is enacted to read:

31A-35-102. Definitions.

As used in this chapter:

(1) "Bail bond" means a bond for a specified monetary amount which is:

(a) executed by a qualified certificate holder under this chapter; and

(b) issued to a court, magistrate, or authorized officer as security for the subsequent court appearance of the defendant upon his release from actual custody pending the appearance.

(2) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

(3) "Bail bond surety" means a bail bond surety company or bail bond surety insurer authorized by certificate under this chapter to issue bonds to secure:

(a) the release of a person from incarceration; and

(b) the appearance of that person at court hearings.

(4) "Bail enforcement agent" means an individual:

(a) who is employed or contracted with to enforce the terms and conditions of a defendant's release on bail in a civil or criminal proceeding, to apprehend a defendant or surrender a defendant to custody, or both, as is appropriate; and

(b) who receives or is promised monies or other things of value for these services.

(5) "Board" means the Bail Bond Surety Oversight Board created in Section 31A-35-201.

(6) "Certificate" means a certificate of authority issued under this chapter to allow operation as a bail bond surety.

(7) "Department" means the insurance department referred to under Title 31A, Chapter 2, Part 1, The Insurance Department.

(8) "Indemnitor" means an entity or natural person who enters into an agreement with a surety to hold the surety harmless from loss incurred as a result of executing a bond.

(9) "Insurance bail bond surety company" means any sole proprietor or entity who:

(a) is the agent of an authorized bail bond surety insurer which issues a bail bond in connection with judicial proceedings; and

(b) receives or is promised money or other things of value for this service.

(10) "Letter of credit bail bond surety company" means any sole proprietor or entity who:

(a) pledges the assets of a letter of credit from a financial institution for a bail bond in connection with judicial proceedings; and

(b) receives or is promised money or other things of value for this service.

(11) "Principal" means an individual or corporation whose performance is guaranteed by bond.

(12) "Property bail bond surety company" means any sole proprietor or entity who:

(a) pledges personal or real property, or both, as security for a bail bond in connection with judicial proceedings; and

(b) receives or is promised money or other things of value for this service.

Section 13. Section **31A-35-103** is enacted to read:

31A-35-103. Exemption from other sections of the Insurance Code.

Bail bond surety companies are exempted from:

(1) Title 31A, Chapter 3, Department Funding, Fees, and Taxes, except Section 31A-3-103;

(2) Title 31A, Chapter 4, Insurance in General, except Sections 31A-4-102, 31A-4-103, 31A-4-104, and 31A-4-107;

(3) Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations, except Section 31A-5-103, and

(4) Title 31A, Chapters 6, 6a, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

Section 14. Section **31A-35-104** is enacted to read:

31A-35-104. Rulemaking authority.

The insurance commissioner shall by rule establish specific certification guidelines and standards of conduct for the business of bail bond surety insurance under this chapter.

Section 15. Section **31A-35-201** is enacted to read:

Part 2. Commercial Bail Bond Surety Oversight Board

31A-35-201. Bail Bond Surety Oversight Board creation -- Membership.

(1) There is created a Bail Bond Surety Oversight Board within the insurance department, consisting of the following seven members and one nonvoting member, to be appointed by the insurance commissioner:

(a) one representative each from four licensed bail bond surety companies;

(b) two members of the general public who do not have any financial interest in or

professional affiliation with any bail bond surety company;

(c) one attorney in good standing licensed to practice law in Utah; and

(d) one staff member of the insurance department.

(2) (a) The appointments are for terms of four years. A board member may not serve more than two consecutive terms.

(b) Except as required by Subsection (2)(c), the current members of the Bail Bond Surety Licensing Board created under Section 77-20-11 shall serve the remainder of their terms as members of the board. Upon expiration of their terms they are eligible for appointment to another term.

(c) The insurance commissioner shall, at the time of initial appointments, adjust the length of terms to ensure that the terms of board members are staggered so approximately half of the board is appointed every two years.

(3) Board members serve until:

(a) removed by the insurance commissioner;

(b) their resignation; or

(c) the expiration of their term and the appointment of a successor.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the remainder of the unexpired term.

(5) The board shall annually elect one of its members as chair.

(6) Four members constitute a quorum for the transaction of business.

(7) (a) Members do not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their services.

Section 16. Section **31A-35-202** is enacted to read:

31A-35-202. Board responsibilities.

The board shall:

(1) meet at least quarterly, and also at the call of the chair;

(2) make written recommendations to the insurance commissioner for rules governing the

following aspects of the bail bond surety insurance business:

- (a) certification qualifications, applications, and fees;
- (b) bonding limits;
- (c) unprofessional conduct;
- (d) procedures for hearing and resolving allegations of unprofessional conduct; and
- (e) sanctions for unprofessional conduct;
- (3) screen bail bond surety company certificate applicants and applications;
- (4) recommend to the insurance commissioner action regarding the granting, renewing, suspending, revoking, and reinstating of bail bond surety company certificates;
- (5) (a) conduct investigations of allegations of unprofessional conduct on the part of persons or sureties involved in the business of bail bond surety insurance; and
- (b) provide the results of the investigations to the insurance commissioner with recommendations for action and any appropriate sanctions; and
- (6) maintain and publish a current list of licensed bail bond surety companies.

Section 17. Section **31A-35-301** is enacted to read:

Part 3. The Insurance Commissioner's Duties

31A-35-301. The insurance commissioner's authority.

- (1) The insurance commissioner shall:
 - (a) make rules as necessary for the administration of this chapter;
 - (b) with information as provided by the board, issue or deny certification under this chapter;
- and
- (c) take action regarding a certificate, including suspension or revocation.
 - (2) The insurance commissioner may establish fees for the issuance, renewal, and reinstatement of bail bond surety company certificates of authority under Section 63-38-3.2.

Section 18. Section **31A-35-401** is enacted to read:

Part 4. Certificate of Authority

31A-35-401. Application for certificate of authority -- Process -- Fees.

- (1) (a) A person may not engage in the bail bond surety insurance business without applying

for and receiving a certificate of authority issued under this chapter.

(b) Bail bond surety insurers are granted certificates in the same manner as other insurers doing business in this state under this title.

(c) Bail bond surety companies are granted certificates under this chapter and in accordance with rules made by the insurance commissioner.

(2) An applicant for a certificate under this chapter shall submit to the insurance commissioner:

(a) a completed application form as prescribed by the insurance commissioner;

(b) a fee as determined by the insurance commissioner under Section 63-38-3.2; and

(c) any additional information required by rule.

(3) Fees required under this section are not refundable.

(4) Fees collected under this section shall be deposited in a restricted account created in Section 31A-35-407.

Section 19. Section **31A-35-402** is enacted to read:

31A-35-402. Certificate -- Authority.

(1) A bail bond surety insurance business holding a certificate issued under this chapter or Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Title 31A, Chapter 14, Foreign Insurers, may only issue bonds as a bail bond surety.

(2) A certificate issued under this chapter shall be in a form prescribed by the commissioner and shall state:

(a) the name, address, and telephone number of the licensee;

(b) the date of the license issuance and expiration; and

(c) any other information the commissioner considers necessary.

(3) A bail bond agent may not execute or issue a bail bond in this state without holding a current appointment from a bail bond surety.

(4) A bail bond surety company may not allow any person who does not hold a license under Title 31A, Insurance Code, to solicit or engage in the bail bond surety business on the company's behalf, except for individuals:

(a) employed solely for the performance of clerical, stenographic, investigative, or other administrative duties which do not require a license under this chapter; and

(b) whose compensation is not related to or contingent upon the number of bonds written.

Section 20. Section **31A-35-403** is enacted to read:

31A-35-403. Exemptions to licensing requirements.

This chapter does not affect the negotiation through a licensed broker or agent for, or the execution or delivery of, an undertaking of bail executed by an insurer for its insured under a policy of automobile insurance or of liability insurance upon the automobile of the insured.

Section 21. Section **31A-35-404** is enacted to read:

31A-35-404. Minimum financial requirements for certificate of authority.

(1) A letter of credit bail bond surety company shall maintain an irrevocable letter of credit with a minimum face value of \$250,000 assigned to the state from a Utah financial institution.

(2) A property bail bond surety company shall maintain:

(a) a current financial statement reviewed by a certified public accountant, showing a net worth of at least \$250,000, at least \$50,000 of which is liquid assets;

(b) a copy of the applicant's federal income tax return for the preceding two years; and

(c) for each parcel of real property owned by the applicant, a title letter and an appraisal dated not more than two years prior to the date of application.

(3) An insurance bail bond surety company shall maintain a qualifying power of attorney issued by the applicant's insurer. The insurer shall be:

(a) in good standing in its state of domicile; and

(b) authorized to write bail bonds in Utah.

(4) The commissioner may revoke the license of a bail bond surety company that fails to maintain the minimum financial requirements required under this section.

Section 22. Section **31A-35-405** is enacted to read:

31A-35-405. Issuance of certificate of authority -- Denial, right of appeal.

(1) Upon a determination by the board that the applicant has met the requirements for issuance of a certificate of authority under this chapter, the insurance commissioner shall issue to

the applicant a license in the form of a certificate of authority.

(2) If the insurance commissioner denies an application for a certificate under this chapter, he shall provide prompt written notification to the applicant, stating the grounds for denial.

(3) (a) The notification of denial shall inform the applicant that he is entitled to a hearing if he wants to contest the denial, and that he must submit the request in writing to the commissioner within 30 days after the issuance of the denial.

(b) The hearing shall be scheduled not later than 60 days after the commissioner's receipt of the request.

(c) The department shall hear the appeal, and may:

(i) return the case to the insurance commissioner for reconsideration;

(ii) modify the commissioner's decision; or

(iii) reverse the commissioner's decision.

(4) Decisions are subject to review under Title 63, Chapter 46b, Administrative Procedures Act.

Section 23. Section **31A-35-406** is enacted to read:

31A-35-406. Certificate renewal and reinstatement.

(1) (a) A certificate of authority may be renewed upon completion and submission of the renewal application and payment of the applicable renewal fee established under Section 63-38-3.2 to the department on or before the last day of the month in which the certificate of authority expires.

(b) Renewal is due on an annual basis as established by department rule, regardless of when the certificate is issued.

(2) A certificate of authority not renewed under Subsection (1) may be renewed within 30 days after the expiration date, upon payment of a late renewal fee established under Section 63-38-3.2.

(3) A lapsed certificate of authority may be reinstated between 31 days and six months following the expiration of the certificate under Subsection (1) by:

(a) submission of the renewal form; and

(b) payment of a certificate reinstatement fee established under Section 63-38-3.2.

(4) If a certificate expired more than six months ago, the applicant for reinstatement shall submit an application form to the commissioner and pay the application fee established under Section 63-38-3.2.

(5) If a certificate was suspended, the applicant may not submit an application for a certificate until the after the end of the period of suspension.

(6) Fees collected under this section shall be deposited in the restricted account created in Section 31A-35-407.

Section 24. Section **31A-35-407** is enacted to read:

31A-35-407. Restricted account.

(1) There is created within the General Fund a restricted account known as the "Bail Bond Surety Administration Account."

(2) (a) The account shall be funded from the fees imposed under this chapter.

(b) The department shall deposit all fees collected under this part in the account.

(c) The funds in the account shall be used by the department to administer this chapter.

(d) The account shall earn interest, which shall be deposited in the account.

Section 25. Section **31A-35-501** is enacted to read:

Part 5. Action Regarding a Certificate

31A-35-501. Emergency action regarding a certificate.

(1) If the insurance commissioner determines, based on an investigation, that the public health, safety, or welfare requires emergency action, the commissioner may order a summary suspension of a certificate pending proceedings for revocation or other action.

(2) The order shall state:

(a) the grounds upon which the summary suspension is issued, including the charges made against the holder of the certificate; and

(b) shall advise the certificate holder of the right to an administrative hearing before the commissioner within 60 days after the summary suspension is ordered.

Section 26. Section **31A-35-502** is enacted to read:

31A-35-502. Notification of violation of chapter.

If the commissioner has reason to believe a certificate holder has violated this chapter, written notice shall be sent to the certificate holder, advising him of:

- (1) the alleged violation;
- (2) the commissioner's authority to take action against the certificate; and
- (3) the certificate holder's right to an administrative hearing under Title 63, Chapter 46b,

Administrative Procedures Act, and the period of time within which the hearing must be requested.

Section 27. Section **31A-35-503** is enacted to read:

31A-35-503. Disciplinary action -- Hearing -- Appeal.

(1) Based on information the commissioner receives during a hearing regarding a certificate, the commissioner may:

- (a) dismiss the complaint if the commissioner finds it is without merit;
- (b) fix a period and terms of probation best adopted to educate the certificate holder;
- (c) place the certificate on suspension for a period of not more than 12 months; or
- (d) revoke the certificate.

(2) The commissioner shall advise the certificate holder:

- (a) of his findings based on the hearing promptly and in writing; and
- (b) of the certificate holder's rights of appeal under this chapter.

(3) If a bail bond surety company license is suspended or revoked under this chapter, no member or employee of that company, or officer or director of that corporation may receive a certificate under this chapter or be designated in any certificate to exercise authority under this chapter during the period of the suspension or revocation, unless the insurance commissioner determines upon substantial evidence that the member, employee, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the certificate was suspended or revoked.

Section 28. Section **31A-35-601** is enacted to read:

Part 6. Conduct of Bail Bond Business

31A-35-601. Acts of agent.

(1) As used in this section:

(a) "Bail recovery agent" means an individual employed by a bail enforcement agent to assist the bail enforcement agent regarding civil or criminal defendants released on bail by:

- (i) presenting a defendant for required court appearances;
- (ii) apprehending or surrendering a defendant to a court; or
- (iii) keeping the defendant under necessary surveillance.

(b) "Bail recovery apprentice" means an individual who:

- (i) is employed by a bail enforcement agent; and
- (ii) works under the direct supervision of that bail enforcement agent or under the direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless the bail recovery apprentice is conducting activities at the direction of the employing bail enforcement agent that do not require direct supervision.

(2) The acts or conduct of any bail bond agent or bail enforcement agent, bail recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated to him by the bail bond surety, are considered to be the acts or conduct of the bail bond surety for which the bail bond agent or bail bond enforcement agent, bail recovery agent, or bail recovery apprentice is acting as agent.

(3) The acts or conduct of any bail bond agent or bail enforcement agent, bail recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated to him by the bail bond agent are considered to be the acts or conduct of the bail bond agent for which the bail enforcement agent is acting as agent.

Section 29. Section **31A-35-602** is enacted to read:

31A-35-602. Place of business -- Records to be kept there.

(1) (a) Every bail bond surety company shall have and maintain in this state a place of business accessible to the public, and where the certificate holder principally conducts transactions authorized by the certificate.

(b) The address of this location shall appear upon the application for a certificate and upon the certificate issued under this chapter. The certificate holder shall notify the insurance commissioner of any change in this address within 20 days after the change.

(c) This section does not prohibit the certificate holder from maintaining the place of business required under this section in the certificate holder's residence, if it is in Utah.

(2) The bail bond surety company shall keep at its place of business the records required under Section 31A-35-604.

Section 30. Section **31A-35-603** is enacted to read:

31A-35-603. Collateral security.

(1) A bail bond agent may accept collateral security in connection with a bail transaction, if the collateral security is reasonable in relation to the face amount of the bond.

(2) The collateral security must be received by the bail bond agent in his fiduciary capacity. Before any forfeiture of bail the bail bond agent shall keep the collateral separate and apart from any other funds or assets of the licensee.

(3) (a) Any collateral that is deposited with a bail bond agent or bail bond surety company shall be returned to the person who deposited it within ten days after the return is requested by the person who deposited it, if the bond has been exonerated and all fees owed to the bail bond agent or bail bond surety have been paid.

(b) A certified copy of the minute order from the court, stating the bail or undertaking was ordered exonerated is prima facie evidence of exoneration or termination of liability.

(4) If a bail bond agent accepts collateral, he shall give a written receipt for the collateral. This receipt must include a fully detailed account of the collateral received.

(5) Upon return of collateral to the person who posted it, if any amount has been deducted by the bail bond surety or bail bond agent as expense, the bail bond surety or bail bond agent shall include with the returned collateral an itemized statement of all expenses deducted from the collateral, and shall maintain a copy of the statement in his records.

(6) If the bond secured by the collateral is forfeited and the bail bond agent or bail bond surety company retains possession of the collateral in payment of the forfeiture or otherwise disposes of the collateral, the party retaining possession or disposing of the property shall maintain a written record of the collateral, including any disposition.

(7) (a) If a document which conveys title to real property is used as collateral in a bail bond

transaction, the document shall state on its face that it is executed as part of a security transaction.

(b) If the document is recorded, the bail bond agent or the bail bond surety company shall:

(i) execute a reconveyance of the property, executed so that the reconveyance can be recorded; and

(ii) promptly deliver the reconveyance document to the person executing the original conveyance, or to his heirs, legal representative, or successor in interest.

Section 31. Section **31A-35-604** is enacted to read:

31A-35-604. Records -- Maintenance -- Guarantors' records.

(1) Every bail bond agent shall maintain at his place of business:

(a) records of all bail bonds he has executed or countersigned, so the public may obtain all necessary information concerning those bail bonds for at least one year after the liability of the surety has been terminated; and

(b) any additional information the insurance commissioner may reasonably require by rule.

(2) Records under Subsection (1) shall be available for examination by the commissioner or his representatives during regular business hours.

(3) The bail bond surety company shall maintain for three years after receipt all records forwarded to it by its bail bond agents.

Section 32. Section **31A-35-605** is enacted to read:

31A-35-605. Guarantors -- Agreement and enforcement.

(1) All agreements of persons to act as guarantor for a bail bond shall be in writing or reduced to writing as soon as possible after completion.

(2) When a person executes an agreement to act as a guarantor, the bail bond surety company or the bail bond agent shall deliver to that person a copy of the agreement promptly upon that person's execution of the agreement.

(3) A bail bond agent may not enforce any guarantor agreement without disclosing to the guarantor all collateral held by the bail bond agent indemnifying the bond to which the agreement relates, and the identity of each other guarantor.

Section 33. Section **31A-35-606** is enacted to read:

31A-35-606. Bail agreement prior to commission of offense prohibited.

A bail bond surety or bail bond agent may not enter into an agreement or arrangement with any person, guaranteeing or assuring in advance of the commission of any offense that bail will be furnished to that person or any other party if arrested.

Section 34. Section **31A-35-607** is enacted to read:

31A-35-607. Filing of forms.

(1) In accordance with Section 31A-21-201, each certificate holder shall file with the insurance commissioner a sample copy of each form the certificate holder uses in his bail bond surety business.

(2) These forms shall be filed:

(a) within 30 days of the effective date of this chapter; and

(b) when any form under Subsection (1) is changed or put into use.

(3) (a) The department shall maintain and make available for public inspection a file regarding each bail bond surety.

(b) The forms required under this section shall be maintained in the submitting bail bond surety's file.

Section 35. Section **31A-35-608** is enacted to read:

31A-35-608. Premiums and authorized charges.

(1) A bail bond surety or bail bond agent may not, in any bail transaction or in connection with that transaction, directly or indirectly, charge or collect money or other valuable consideration from any person except to:

(a) pay the premium on the bail at the rates established by the bail bond surety company;

(b) provide collateral;

(c) reimburse himself for actual expenses, as described in Subsection (2), incurred in connection with the bail bond transaction; or

(d) to reimburse himself, or to establish a right of action against the principal or any indemnitor, for actual expenses the bail bond surety or bail bond agent incurred in good faith and which were by reason of breach by the defendant of any of the terms of the written agreement under

which the undertaking of bail or bail bond was written.

(2) (a) If a bail bond agent did not establish a written agreement, or there is only an incomplete writing, the bail bond surety may bring an action in a court of law to enforce its equitable rights against the principal and his indemnitors in exoneration.

(b) Reimbursement claimed under this Subsection (2) may not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that are verified by receipt and in total do not amount to more than the principal sum of the bond or undertaking, incurred in good faith by the bail bond surety, its agents, and employees by reason of the principal's breach.

(3) This section does not affect or impede the right of a bail bond agent to execute undertaking of bail on behalf of a nonresident agent of the surety he represents.

Section 36. Section **31A-35-701** is enacted to read:

Part 7. Prohibitions and Penalties

31A-35-701. Prohibited acts.

(1) A bail bond agent or bail bond surety may not:

(a) solicit business in or about any place where persons in the custody of the state or any local law enforcement or correctional agency are confined, or in or about any court;

(b) pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission, or reduction of the amount of any undertaking or bail bond;

(c) pay a fee or rebate or give anything of value to an attorney in regard to any bail bond matter, except payment for legal services actually rendered for the bail bond agent or bail bond surety; or

(d) pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

(2) The following persons may not act as bail bond agents and may not, directly or indirectly, receive any benefits from the execution of any bail bond:

(a) any person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) law enforcement officers;

(c) judges;

(d) sheriffs, deputy sheriffs, and constables; and

(e) trustees or prisoners incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

(3) A bail bond agent may not sign or countersign in blank any bail bond, or give the power of attorney to, or otherwise authorize, anyone to countersign his name to bonds.

(4) A bail bond agent may not advertise or hold himself out to be a bail bond surety.

Section 37. Section **31A-35-702** is enacted to read:

31A-35-702. Early surrender without cause.

(1) If a bail bond agent without good cause surrenders a defendant to custody before the time specified in the undertaking of bail or the bail bond for the appearance of the defendant, or before any other occasion where the presence of the defendant in court is lawfully required, the bail or bail bond premium shall be returned in full.

(2) As used in this section, "good cause" includes:

(a) information received from a source credible under the circumstances that the defendant intends to fail to appear before the appropriate court at the date and time prescribed;

(b) the defendant providing materially false information on the application for bail or a bail bond;

(c) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;

(d) a material and detrimental change in the collateral posted by the defendant or one acting on his behalf;

(e) the defendant changing his address or telephone number without giving reasonable notice to the bail bond agent or bail bond surety;

(f) the defendant commits another crime, other than a minor traffic violation, as defined by department rule, while on bail;

(g) failure by the defendant to appear in court at the appointed time; or

(h) a finding of guilt against the defendant by a court of competent jurisdiction.

Section 38. Section **31A-35-703** is enacted to read:

31A-35-703. Disciplinary action.

(1) Persons or organizations found to be in violation of the statutes or rules governing the conduct of bail bond agents and bail bond sureties under this chapter are subject to disciplinary action by the insurance commissioner against the certificate, and imposition of civil penalties, as authorized under Title 31A, Chapter 2, Administration of the Insurance Laws.

(2) Penalties collected under this section shall be deposited in the restricted account created in Section 31A-35-407.

Section 39. Section **31A-35-704** is enacted to read:

31A-35-704. Submission of bail bond surety insurers, companies, and agents to jurisdiction of court.

By applying for and receiving certification under this chapter, bail bond surety insurers, companies, and agents:

(1) submit to the jurisdiction of the court;

(2) irrevocably appoint the clerk of the court as agent upon whom any papers affecting the bail bond surety insurer, company, or agent's liability on the undertaking may be served; and

(3) acknowledge that liability may be enforced on motion and upon notice as the court may require, without the necessity of an independent action.

Section 40. Section **77-20-1** is amended to read:

77-20-1. Right to bail -- Denial of bail -- Hearing.

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital offense, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge; [or]

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other

person or to the community, or is likely to flee the jurisdiction of the court, if released on bail[-]; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may [likewise] be released either on his own recognizance or [~~without posting a bond on~~] upon posting bail, on condition that he appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court[-] that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate;
and

(d) ensure the safety of the public.

(3) The initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the accused's first judicial appearance. The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(4) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present. Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing. The magistrate or court may rely on information as provided in Subsections (3)(a) through (d) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(5) Subsequent motions to modify bail orders may be made only upon a showing that there

has been a material change in circumstances.

(6) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

Section 41. Section **77-20-3** is amended to read:

77-20-3. Release on own recognizance -- Changing amount of bail or conditions of release.

(1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate or court.

(2) After releasing the defendant on his own recognizance or admitting the defendant to bail, the magistrate or court may~~[, in his discretion,]~~:

(a) impose bail or increase or decrease the amount of the bail~~[-]; and~~

(b) impose or change the conditions of release under Subsection 77-20-1(2).

Section 42. Section **77-20-4** is amended to read:

77-20-4. Bail posted in cash or written undertaking.

(1) Bail may be posted in cash or written undertaking with or without sureties at the discretion of the magistrate. Written undertaking shall substantially conform to any form approved by the supreme court.

(2) A bail bond may not be accepted without receiving in writing at the time the bail is posted the current mailing address and telephone number of the surety.

Section 43. Section **77-20-5** is amended to read:

77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.

(1) The sureties on written undertakings shall be real or personal property holders within the state. The qualifications and bonding limits of bail bond sureties who are engaged in the for-profit, commercial business of posting property bonds shall be established by the Bail Bond Surety [~~Licensing~~] Oversight Board and rules adopted by the [~~Judicial Council~~] insurance commissioner. All other sureties shall collectively have a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

(2) Each surety shall justify by affidavit upon the undertaking and each may be further

examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to his property and net worth.

(3) The undertaking shall, in addition to other requirements, provide that each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the undertaking may be served, and that his liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

Section 44. Section **77-20-7** is amended to read:

77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration if charges not filed.

(1) The principal and the sureties on the written undertaking are liable thereon during all proceedings and for all appearances required of the defendant up to and including the surrender of the defendant in execution of any sentence imposed irrespective of any contrary provision in the undertaking.

(2) Notice of any required appearance by the defendant may be given by the court to the sureties who shall thereupon cause the defendant's appearance as required. Any failure of the defendant to appear when required is a breach of the conditions of the undertaking or bail and subjects it to forfeiture irrespective of whether or not notice was given to the sureties.

(3) If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless the prosecutor requests an extension of time before the end of the 120-day period by:

(a) filing a notice for extension with the court; and

(b) serving the notice for extension upon the sureties and the person or his attorney.

(4) A court may extend bail and conditions of release for good cause.

(5) Subsection (3) does not prohibit the filing of charges against a person at any time.

Section 45. Section **77-20b-101** is enacted to read:

CHAPTER 20b. BAIL SURETY

77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

(1) If a defendant who has posted bail fails to appear before the appropriate court when required and the court issues a bench warrant or directs that the surety be given notice of the nonappearance, the clerk of the court shall:

(a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety who posted the bond; and

(b) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a).

(2) If notice is not provided in accordance with Subsection (1)(a), the prosecutor may mail notice of nonappearance by certified mail, return receipt requested, to the address of the surety within seven days after the end of the 30-day period under Subsection (1)(a).

(3) If notice of nonappearance is not mailed to a surety, other than the defendant, in accordance with Subsection (1) or (2), the surety is relieved of further obligation under the bond if:

(a) the surety's current name and address are on the bail bond in the court's file; and

(b) the surety does not otherwise have actual notice of the defendant's failure to appear.

Section 46. Section **77-20b-102** is enacted to read:

77-20b-102. Time for bringing defendant to court.

(1) If notice of nonappearance has been mailed to a surety under Section 77-20b-101, the surety may bring the defendant before the court within six months of the date of nonappearance, during which time a forfeiture action on the bond may not be brought.

(2) A surety may request an extension of the six-month time period in Subsection (1), if the surety within that time:

(a) files a motion for extension with the court; and

(b) mails the motion for extension and a notice of hearing on the motion to the prosecutor.

(3) The court may extend the six-month time in Subsection (1) for not more than 60 days, if the surety has complied with Subsection (2) and the court finds good cause.

Section 47. Section **77-20b-103** is enacted to read:

77-20b-103. Defendant in custody -- Notice to prosecutor.

(1) If a surety is unable to bring a defendant to the court because the defendant is and will be in the custody of authorities of another jurisdiction for the duration of the six-month period under Section 77-20b-102, the surety shall notify the court and the prosecutor and provide the name, address, and telephone number of the custodial authority.

(2) If the defendant is subject to extradition or other means by which the state can return the defendant to the court's custody, and the surety gives notice under Subsection (1), the surety's bond shall be exonerated to the extent the bond exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to the court's custody, upon the occurrence of the earlier of:

(a) the prosecuting attorney's lodging a detainer on the defendant; or

(b) 60 days after the surety gives notice to the prosecutor under Subsection (1), if the defendant remains in custody of the same authority during that 60-day period.

Section 48. Section **77-20b-104** is enacted to read:

77-20b-104. Forfeiture of bail.

(1) If a surety fails to bring the defendant before the court within the time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

(a) filing a motion for bail forfeiture with the court, supported by proof of notice to the surety of the defendant's nonappearance; and

(b) mailing a copy of the motion to the surety.

(2) A court shall enter judgment of bail forfeiture without further notice if it finds by a preponderance of the evidence:

(a) the defendant failed to appear as required;

(b) the surety was given notice of the defendant's nonappearance in accordance with Section 77-20b-101;

(c) the surety failed to bring the defendant to the court within the six-month period under Section 77-20b-102; and

(d) the prosecutor has complied with the notice requirements under Subsection (1).

(3) If the surety shows by a preponderance of the evidence that it has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail forfeiture.

(4) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant, the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction. A judgment under this Subsection (4) shall:

(a) identify the surety against whom judgment is granted;

(b) specify the amount of bail forfeited;

(c) grant the forfeited bail to the prosecuting entity; and

(d) be docketed by the clerk of the court in the civil judgment docket.

(5) A prosecutor may immediately commence collection proceedings to execute a judgment of bond forfeiture against the property of the surety.

Section 49. Repealer.

This act repeals:

Section 77-20-11, Bail Bond Surety Licensing Board -- Establishment -- Appointment of members -- Terms -- Fees.

Section 77-20-12, Bail Bond Surety Licensing Board -- Duties.

Section 77-20-13, Judicial Council -- Rulemaking authority.

Section 77-20a-1, Entry in minutes as forfeiture -- Notice -- Release of surety on failure of notice.

Section 77-20a-2, Judgment on bail -- Execution.

Section 77-20a-3, Setting aside forfeiture or judgment -- Grounds -- Time for application.

Section 77-20a-4, Defendant detained by other authority -- Procedure -- Costs of returning defendant.

Section 77-20a-5, Liquidated costs of returning defendant -- Judgment against surety -- Execution.

Section 77-20a-6, Execution of judgment.