

1 **BAIL AND BAIL BOND SURETY RELATED**

2 **AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: L. Steven Poulton**

6 AN ACT RELATING TO BAIL BONDS; AMENDING DEFINITIONS; ADDRESSING
7 REQUIREMENTS FOR LICENSURE OR OBTAINING A CERTIFICATE OF AUTHORITY;
8 ADDRESSING AUTHORITY RELATED TO BAIL BONDS; ADDRESSING FINANCIAL
9 REQUIREMENTS FOR BAIL BOND SURETY COMPANIES; ADDRESSING PROCEDURES
10 FOR ISSUING, DENYING, RENEWING, AND REINSTATING A BAIL BOND SURETY
11 COMPANY'S LICENSE; ADDRESSING ENFORCEMENT; ADDRESSING REQUIREMENTS
12 FOR AND RESTRICTION ON OPERATIONS; ADDRESSING SUBMISSION TO THE
13 JURISDICTION OF THE COURT; ADDRESSING PROCEDURES UNDER THE BAIL BOND
14 SURETY ACT; AMENDING BAIL BOND PROVISIONS; AND MAKING TECHNICAL
15 CHANGES.

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

17 AMENDS:

18 **31A-35-101**, as enacted by Chapter 293, Laws of Utah 1998

19 **31A-35-102**, as enacted by Chapter 293, Laws of Utah 1998

20 **31A-35-104**, as enacted by Chapter 293, Laws of Utah 1998

21 **31A-35-202**, as last amended by Chapter 131, Laws of Utah 1999

22 **31A-35-301**, as last amended by Chapter 131, Laws of Utah 1999

23 **31A-35-401**, as enacted by Chapter 293, Laws of Utah 1998

24 **31A-35-402**, as enacted by Chapter 293, Laws of Utah 1998

25 **31A-35-404**, as enacted by Chapter 293, Laws of Utah 1998

26 **31A-35-405**, as enacted by Chapter 293, Laws of Utah 1998

27 **31A-35-406**, as enacted by Chapter 293, Laws of Utah 1998

- 28 **31A-35-501**, as enacted by Chapter 293, Laws of Utah 1998
- 29 **31A-35-502**, as enacted by Chapter 293, Laws of Utah 1998
- 30 **31A-35-503**, as enacted by Chapter 293, Laws of Utah 1998
- 31 **31A-35-602**, as enacted by Chapter 293, Laws of Utah 1998
- 32 **31A-35-603**, as enacted by Chapter 293, Laws of Utah 1998
- 33 **31A-35-604**, as enacted by Chapter 293, Laws of Utah 1998
- 34 **31A-35-607**, as enacted by Chapter 293, Laws of Utah 1998
- 35 **31A-35-608**, as enacted by Chapter 293, Laws of Utah 1998
- 36 **31A-35-701**, as last amended by Chapter 131, Laws of Utah 1999
- 37 **31A-35-702**, as enacted by Chapter 293, Laws of Utah 1998
- 38 **31A-35-703**, as enacted by Chapter 293, Laws of Utah 1998
- 39 **31A-35-704**, as enacted by Chapter 293, Laws of Utah 1998
- 40 **77-20-8.5**, as last amended by Chapter 257, Laws of Utah 1998
- 41 **77-20-10**, as enacted by Chapter 160, Laws of Utah 1988
- 42 **77-20b-101**, as enacted by Chapter 293, Laws of Utah 1998
- 43 **77-20b-102**, as enacted by Chapter 293, Laws of Utah 1998
- 44 **77-20b-103**, as enacted by Chapter 293, Laws of Utah 1998
- 45 **77-20b-104**, as enacted by Chapter 293, Laws of Utah 1998

46 REPEALS:

- 47 **77-20-6**, as enacted by Chapter 15, Laws of Utah 1980

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

49 Section 1. Section **31A-35-101** is amended to read:

50 **CHAPTER 35. BAIL BOND SURETIES AND AGENTS ACT**

51 **31A-35-101. Title.**

52 This chapter is known as the "Bail Bond [~~Surety Licensing~~] Sureties and Agents Act."

53 Section 2. Section **31A-35-102** is amended to read:

54 **31A-35-102. Definitions.**

55 As used in this chapter:

56 (1) "Bail bond" means a bond for a specified monetary amount [~~which~~] that is:

57 (a) executed by a [~~qualified certificate holder under this chapter~~] bail bond agent licensed

58 in accordance with Section 31A-35-401; and

59 (b) issued to a court, magistrate, or authorized officer as security for the subsequent court
60 appearance of the defendant upon ~~[his]~~ the defendant's release from actual custody pending the
61 appearance.

62 (2) "Bail bond agent" means ~~[any]~~ an individual who:

63 (a) is appointed by ~~[an authorized bail bond]~~:

64 (i) a surety insurer ~~[or appointed by a licensed]~~ that issues bail bonds; or

65 (ii) a bail bond surety company licensed under this chapter;

66 (b) is appointed to execute or countersign undertakings of bail in connection with judicial
67 proceedings; and ~~[(b) who]~~

68 (c) receives or is promised money or other things of value for ~~[this service]~~ engaging in
69 an act described in Subsection (2)(b).

70 (3) "Bail bond surety" means a person that:

71 (a) (i) is a bail bond surety company ~~[or bail bond surety insurer authorized by certificate~~
72 under this chapter to issue] licensed under this chapter; or

73 (ii) a surety insurer; and

74 (b) issues bonds to secure:

75 ~~[(a)]~~ (i) the release of a person from incarceration; and

76 ~~[(b)]~~ (ii) the appearance of that person at court hearings.

77 (4) "Bail bond surety company" means any sole proprietor or entity who:

78 (a) (i) is the agent of a surety insurer that issues a bail bond in connection with judicial
79 proceedings;

80 (ii) pledges the assets of a letter of credit from a Utah depository institution for a bail bond
81 in connection with judicial proceedings; or

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

84 (b) receives or is promised money or other things of value for a service described in
85 Subsection (4)(a).

86 ~~[(4)]~~ (5) "Bail enforcement agent" means an individual who:

87 (a) ~~[who]~~ is employed or contracted with to:

88 (i) enforce the terms and conditions of a defendant's release on bail in a civil or criminal
89 proceeding~~[- to]~~;

90 (ii) apprehend a defendant or surrender a defendant to custody[;]; or

91 (iii) both[, as is appropriate] Subsections (5)(a)(i) and (ii); and

92 (b) [who] receives or is promised monies or other things of value for [these] the services
93 described in Subsection (5)(a).

94 [(5)] (6) "Board" means the Bail Bond Surety Oversight Board created in Section
95 31A-35-201.

96 [(6)] (7) "Certificate" means a certificate of authority issued under this chapter to allow
97 [operation as a bail bond] an insurer to operate as a surety insurer.

98 [(7) "Department" means the insurance department referred to under Title 31A, Chapter
99 2, Part 1, The Insurance Department.]

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

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

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

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

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

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

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

111 (9) "Liquid assets" means financial holdings that can be converted into cash in a timely
112 manner without the loss of principal.

113 [(11)] (10) "Principal" means an individual or corporation whose performance is
114 guaranteed by bond.

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

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

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

119 (11) "Surety insurer" means an insurer that:

120 (a) is licensed under Chapter 4, 5, or 14;

121 (b) receives a certificate under this title; and

122 (c) issues bail bonds.

123 (12) "Utah depository institution" is a depository institution, as defined in Section 7-1-103,

124 that:

125 (a) has Utah as its home state; or

126 (b) operates a branch in Utah.

127 Section 3. Section **31A-35-104** is amended to read:

128 **31A-35-104. Rulemaking authority.**

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

132 Section 4. Section **31A-35-202** is amended to read:

133 **31A-35-202. Board responsibilities.**

134 The board shall:

135 (1) meet:

136 (a) at least quarterly; and

137 (b) at the call of the chair;

138 (2) make written recommendations to the commissioner for rules governing the following
139 aspects of the bail bond surety insurance business:

140 (a) [certification] qualifications, applications, and fees for obtaining:

141 (i) a license required by this Section 31A-35-401; or

142 (ii) a certificate;

143 (b) [bonding] limits on the aggregate amounts of bail bonds;

144 (c) unprofessional conduct;

145 (d) procedures for hearing and resolving allegations of unprofessional conduct; and

146 (e) sanctions for unprofessional conduct;

147 (3) screen:

148 (a) bail bond surety company [certificate applicants and applications] license applications;

149 and

150 (b) persons applying for a bail bond surety company license;

151 (4) recommend to the [insurance] commissioner action regarding the granting, renewing,

152 suspending, revoking, and reinstating of bail bond surety company [~~certificates~~] license; and

153 (5) (a) conduct investigations of allegations of unprofessional conduct on the part of
154 persons or bail bond sureties involved in the business of bail bond surety insurance; and

155 (b) provide the results of the investigations described in Subsection (5)(a) to the
156 [~~insurance~~] commissioner with recommendations for:

157 (i) action; and

158 (ii) any appropriate sanctions.

159 Section 5. Section **31A-35-301** is amended to read:

160 **31A-35-301. The commissioner's authority.**

161 (1) The commissioner shall:

162 (a) make rules as necessary for the administration of this chapter;

163 (b) with information as provided by the board, issue or deny [~~certification~~] licensure under
164 this chapter;

165 (c) take action regarding a [~~certificate~~] license, including suspension or revocation; and

166 (d) maintain and publish a current list of licensed bail bond surety companies and agents.

167 (2) The commissioner may establish fees for the issuance, renewal, and reinstatement of
168 a bail bond surety company [~~certificates of authority under~~] license in accordance with Section
169 63-38-3.2.

170 Section 6. Section **31A-35-401** is amended to read:

171 **31A-35-401. Requirement for license or certificate of authority -- Process -- Fees --**

172 **Limitations.**

173 (1) (a) A person may not engage in the bail bond surety insurance business [~~without~~
174 ~~applying for and receiving a certificate of authority issued~~] unless that person:

175 (i) is a bail bond surety company licensed under this chapter[- (b) ~~Bail bond~~];

176 (ii) is a surety [insurers are] insurer that is granted [certificates] a certificate under this
177 section in the same manner as other insurers doing business in this state are granted certificates of
178 authority under this title[-]; or

179 (iii) is a bail bond agent licensed in accordance with this section.

180 [~~(c) Bail~~] (b) A bail bond surety [~~companies are granted certificates under this chapter and~~
181 ~~in accordance with rules made by the insurance commissioner~~] company shall be licensed under
182 this chapter as an agency.

183 (c) A bail bond agent shall be licensed under Chapter 23 as an agent.

184 (2) ~~[An applicant for a certificate]~~ A person applying for a bail bond surety company
 185 license under this chapter shall submit to the [insurance] commissioner:

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

187 (b) a fee as determined by the [insurance] commissioner ~~[under]~~ in accordance with
 188 Section 63-38-3.2; and

189 (c) any additional information required by rule.

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

191 (4) Fees collected ~~[under this section]~~ from a bail bond surety company shall be deposited
 192 in a restricted account created in Section 31A-35-407.

193 (5) (a) A bail bond surety company shall be domiciled in Utah.

194 (b) A bail bond agent shall be a resident of Utah.

195 (c) A foreign surety insurer that is granted a certificate to issue bail bonds may only issue
 196 bail bonds through a bail bond surety company licensed under this chapter.

197 Section 7. Section **31A-35-402** is amended to read:

198 **31A-35-402. Authority related to bail bonds.**

199 (1) A bail bond surety ~~[insurance business holding a certificate issued under this chapter~~
 200 ~~or Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Title 31A, Chapter~~
 201 ~~14, Foreign Insurers;]~~ company may only issue bail bonds [as a bail bond surety].

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

204 ~~[(a) the name, address, and telephone number of the licensee;]~~

205 ~~[(b) the date of the license issuance and expiration; and]~~

206 ~~[(c) any other information the commissioner considers necessary.]~~

207 ~~[(3)]~~ (2) A bail bond agent may not execute or issue a bail bond in this state without
 208 holding a current appointment from a bail bond surety.

209 ~~[(4)]~~ (3) A bail bond surety [company] may not allow any person who ~~[does not hold a~~
 210 ~~license under Title 31A, Insurance Code, to solicit or]~~ is not a bail bond agent to engage in the bail
 211 bond surety business on the [company's] bail bond surety's behalf, except for individuals:

212 (a) employed solely for the performance of clerical, stenographic, investigative, or other
 213 administrative duties [which] that do not require a license ~~[under this chapter; and]~~ as:

214 (i) a bail bond surety company; or

215 (ii) a bail bond agent; and

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

217 Section 8. Section **31A-35-404** is amended to read:

218 **31A-35-404. Minimum financial requirements for bail bond surety company license.**

219 (1) (a) A [~~letter of credit~~] bail bond surety company that pledges the assets of a letter of
220 credit from a Utah depository institution in connection with a judicial proceeding shall maintain

221 an irrevocable letter of credit with a minimum face value of [~~\$250,000~~] \$300,000 assigned to the

222 state from a Utah [~~financial~~] depository institution.

223 (b) Notwithstanding Subsection (1)(a), a bail bond surety company described in Subsection

224 (1)(a) that is licensed under this chapter as of December 31, 1999, shall maintain an irrevocable

225 letter of credit with a minimum face value of \$250,000 assigned to the state from a Utah depository

226 institution.

227 (2) (a) A [~~property~~] bail bond surety company that pledges personal or real property, or

228 both, as security for a bail bond in connection with a judicial proceeding shall maintain:

229 [~~(a)~~] (i) (A) a current financial statement;

230 (I) reviewed by a certified public accountant[~~;~~]; and

231 (II) showing a net worth of at least [~~\$250,000~~] \$300,000, at least [~~\$50,000~~] \$100,000 of

232 which is in liquid assets; or

233 (B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed under

234 this chapter as of December 31, 1999, a current financial statement:

235 (I) reviewed by a certified public accountant; and

236 (II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid assets;

237 [~~(b)~~] (ii) a copy of the applicant's federal income tax return for the preceding two years;

238 and

239 [~~(c)~~] (iii) for each parcel of real property owned by the applicant[~~;~~] and included in net

240 worth calculations:

241 (A) a title letter; and

242 (B) an appraisal dated not more than two years prior to the date of application.

243 (b) For purposes of this Subsection (2), only real or personal property located in Utah may

244 be included in the net worth of the bail bond surety company.

245 (3) ~~[An insurance]~~ A bail bond surety company shall maintain a qualifying power of
 246 attorney issued by ~~[the applicant's]~~ a surety insurer~~[- The insurer shall be]:~~

247 (a) if the bail bond surety company is the agent of the surety insurer; and

248 (b) the surety insurer:

249 (i) issues bail bonds;

250 ~~[(a)]~~ (ii) is in good standing in its state of domicile; and

251 ~~[(b) authorized]~~ (iii) is granted a certificate to write bail bonds in Utah.

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

254 (5) The commissioner may set by rule the limits on the aggregate amounts of bail bonds
 255 issued by a bail bond surety company.

256 Section 9. Section **31A-35-405** is amended to read:

257 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

258 (1) Upon a determination by the board that ~~[the applicant has met]~~ a person applying for
 259 a bail bond surety company license meets the requirements for issuance of a ~~[certificate of~~
 260 authority] license under this chapter, the ~~[insurance]~~ commissioner shall issue to ~~[the applicant a]~~
 261 that person a bail bond surety company license ~~[in the form of a certificate of authority].~~

262 (2) (a) If the [insurance] commissioner denies an application for a [certificate] bail bond
 263 surety company license under this chapter, ~~[he]~~ the commissioner shall provide prompt written
 264 notification to the ~~[applicant,]~~ person applying for licensure:

265 (i) stating the grounds for denial~~[- (3) (a) The notification of denial shall inform the~~
 266 applicant that he]; and

267 (ii) notifying the person applying for licensure as a bail bond company that:

268 (A) the person is entitled to a hearing if ~~[he]~~ that person wants to contest the denial~~[-];~~ and
 269 [that he must]

270 (B) if the person wants a hearing, the person shall submit the request in writing to the
 271 commissioner within 30 days after the issuance of the denial.

272 (b) The hearing described in Subsection (2)(a) shall be scheduled not later than 60 days
 273 after the commissioner's receipt of the request.

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

275 (i) return the case to the ~~[insurance]~~ commissioner for reconsideration;

276 (ii) modify the commissioner's decision; or

277 (iii) reverse the commissioner's decision.

278 [~~(4) Decisions are~~] (3) A decision under this section is subject to review under Title 63,
279 Chapter 46b, Administrative Procedures Act.

280 Section 10. Section **31A-35-406** is amended to read:

281 **31A-35-406. Renewal and reinstatement.**

282 (1) (a) [~~A certificate of authority may be renewed upon completion and submission of the~~
283 ~~renewal application and payment of the applicable renewal fee established under Section 63-38-3.2~~
284 ~~to the department~~] To renew its license under this chapter, on or before the last day of the month
285 in which the [certificate of authority] license expires[-] a bail bond surety company shall:

286 (i) complete and submit a renewal application to the department; and

287 (ii) pay the department the applicable renewal fee established in accordance with Section
288 63-38-3.2.

289 (b) [~~Renewal is due on an annual basis~~] A bail bond surety company shall renew its license
290 under this chapter annually as established by department rule, regardless of when the [certificate]
291 license is issued.

292 (2) A [~~certificate of authority~~] bail bond surety company may renew a bail bond surety
293 company license not renewed under Subsection (1) [may be renewed] within 30 days after the
294 expiration date[-, upon payment of] by:

295 (a) submitting a renewal application required by Subsection (1); and

296 (b) paying a late renewal fee established [under] in accordance with Section 63-38-3.2.

297 (3) A [~~lapsed certificate of authority may be reinstated-~~] bail bond surety company may
298 apply for reinstatement of an expired bail bond surety company license between 31 days and six
299 months following the expiration of the [certificate] license under Subsection (1) by:

300 (a) [~~submission of~~] submitting the renewal [form] application required by Subsection (1);
301 and

302 (b) [~~payment of a certificate~~] paying a license reinstatement fee established [under] in
303 accordance with Section 63-38-3.2.

304 (4) If a [~~certificate~~] bail bond surety company license has been expired for more than six
305 months [ago, the applicant], the person applying for reinstatement of the bail bond surety license
306 shall:

307 (a) submit an application form to the commissioner; and

308 (b) pay the application fee established ~~[under]~~ in accordance with Section 63-38-3.2.

309 (5) If a ~~[certificate was]~~ bail bond surety company license is suspended, the applicant may
310 not submit an application for a ~~[certificate]~~ bail bond surety company license until ~~[the]~~ after the
311 end of the period of suspension.

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

314 Section 11. Section **31A-35-501** is amended to read:

315 **31A-35-501. Emergency action regarding a license.**

316 (1) If the ~~[insurance]~~ commissioner determines, based on an investigation, that the public
317 health, safety, or welfare requires emergency action, the commissioner may order a summary
318 suspension of a ~~[certificate]~~ bail bond surety company license pending proceedings for revocation
319 or other action.

320 (2) The order described in Subsection (1) shall ~~[state]~~:

321 (a) state the grounds upon which the summary suspension is issued, including the charges
322 made against the ~~[holder of the certificate]~~ licensee; and

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

325 Section 12. Section **31A-35-502** is amended to read:

326 **31A-35-502. Notification of violation of chapter.**

327 If the commissioner has reason to believe a ~~[certificate holder]~~ person licensed as a bail
328 bond surety company or a bail bond agent has violated this chapter, written notice shall be sent to
329 ~~[the certificate holder]~~ that person, advising ~~[him]~~ the person of:

330 (1) the alleged violation;

331 (2) the commissioner's authority to take action against ~~[the certificate; and]~~ the person's
332 license;

333 (3) the ~~[certificate holder's]~~ person's right to an administrative hearing under Title 63,
334 Chapter 46b, Administrative Procedures Act~~[,]~~; and

335 (4) the period of time within which the hearing ~~[must]~~ described in Subsection (3) shall
336 be requested if the person requests a hearing.

337 Section 13. Section **31A-35-503** is amended to read:

338 **31A-35-503. Disciplinary action -- Hearing -- Appeal.**

339 (1) Based on information the commissioner receives during a hearing described in Section
340 31A-35-502 regarding a [certificate] person licensed as a bail bond surety company or bail bond
341 agent, the commissioner may:

342 (a) dismiss the complaint if the commissioner finds it is without merit;

343 (b) fix a period and terms of probation best adopted to educate the [certificate holder]
344 person;

345 (c) place the [certificate] license on suspension for a period of not more than 12 months;

346 or

347 (d) revoke the [certificate] license.

348 (2) The commissioner shall advise the [certificate holder] person described in Subsection
349 (1) in writing of:

350 (a) [~~of his~~] the commissioner's findings based on the hearing [promptly and in writing];

351 and

352 (b) [~~of the certificate holder's~~] the person's rights of appeal under this chapter.

353 (3) [~~If~~] (a) Unless the conditions of Subsection (3)(b) are met, if a bail bond surety
354 company license is suspended or revoked under this chapter, [~~no~~] a member [~~or~~], employee [of that
355 company, or], officer, or director of that corporation may [receive a certificate under this chapter]
356 not:

357 (i) be licensed as a bail bond surety company or bail bond agent; or

358 (ii) be designated in any [certificate] license to exercise authority under this chapter during
359 the period of the suspension or revocation[~~, unless~~].

360 (b) Subsection (3)(a) does not apply if the [insurance] commissioner determines upon
361 substantial evidence that the member, employee, officer, or director:

362 (i) was not personally at fault; and

363 (ii) did not acquiesce in the matter on account of which the [certificate] license was
364 suspended or revoked.

365 Section 14. Section **31A-35-602** is amended to read:

366 **31A-35-602. Place of business -- Records to be kept there.**

367 (1) (a) Every bail bond surety company shall have and maintain in this state a place of
368 business:

369 (i) accessible to the public~~[-];~~ and

370 (ii) where the ~~[certificate holder]~~ bail bond surety company principally conducts
371 transactions authorized by ~~[the certificate]~~ its bail bond surety company license.

372 (b) The address of ~~[this location]~~ the place of business described in Subsection (1)(a) shall
373 appear upon:

374 (i) the application for a ~~[certificate]~~ bail bond surety company license; and ~~[upon the~~
375 ~~certificate]~~

376 (ii) the bail bond surety company license issued under this chapter~~[-. The certificate~~
377 ~~holder].~~

378 (c) A bail bond surety company shall notify the ~~[insurance]~~ commissioner of any change
379 in ~~[this]~~ the address required by this Subsection (1) within 20 days after the change.

380 ~~[(c)]~~ (d) This section does not prohibit ~~[the certificate holder]~~ a bail bond surety company
381 from maintaining the place of business required under this section in the ~~[certificate holder's]~~
382 licensee's residence, if ~~[it]~~ the residence is in Utah.

383 (2) The bail bond surety company shall keep at ~~[its]~~ the place of business described in
384 Subsection (1)(a) the records required under Section 31A-35-604.

385 Section 15. Section **31A-35-603** is amended to read:

386 **31A-35-603. Collateral security.**

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

389 (2) (a) The collateral security ~~[must]~~ described in Subsection (1) shall be received by the
390 bail bond agent in ~~[his]~~ the bail bond agent's fiduciary capacity.

391 (b) Before any judgment of forfeiture of bail, the bail bond agent shall keep the collateral
392 separate and apart from any other funds or assets of the licensee.

393 (3) (a) Any collateral that is deposited with a bail bond agent or bail bond surety
394 ~~[company]~~ shall be returned to the person who deposited it within ten days after the return is
395 requested by the person who deposited it~~[-];~~ if:

396 (i) the bail bond has been exonerated; and

397 (ii) all fees owed to the bail bond agent or bail bond surety have been paid.

398 (b) A certified copy of the minute order from the court~~[-]~~ stating the bail or undertaking
399 was ordered exonerated is prima facie evidence of exoneration or termination of liability.

400 (4) (a) If a bail bond agent accepts collateral, ~~[he]~~ the bail bond agent shall give a written
401 receipt for the collateral. ~~[This]~~

402 (b) The receipt ~~[must]~~ required by Subsection (4)(a) shall include a fully detailed account
403 of the collateral received.

404 (5) Upon return of collateral to the person who posted it, if any amount has been deducted
405 by the bail bond surety or bail bond agent as expense, the bail bond surety or bail bond agent shall:

406 (a) include with the returned collateral an itemized statement of all expenses deducted
407 from the collateral~~[-];~~ and ~~[shall]~~

408 (b) maintain a copy of the statement required by Subsection (5)(a) in [his] the records of
409 the bail bond surety or bail bond agent.

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

414 (7) (a) If a document ~~[which]~~ that conveys title to real property is used as collateral in a
415 bail bond transaction, the document shall state on its face that it is executed as part of a security
416 transaction.

417 (b) If the document described in Subsection (7)(a) is recorded, the bail bond agent or the
418 bail bond surety ~~[company]~~ shall:

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

421 (ii) promptly deliver the reconveyance document to:

422 (A) the person executing the original conveyance~~[-];~~ or ~~[to his]~~

423 (B) the heirs, legal representative, or successor in interest of the person described in
424 Subsection (7)(b)(ii)(A).

425 Section 16. Section **31A-35-604** is amended to read:

426 **31A-35-604. Records.**

427 (1) ~~[Every]~~ A bail bond agent shall maintain at ~~[his]~~ the bail bond agent's place of
428 business:

429 (a) records of all bail bonds ~~[he has executed or countersigned]~~ the bail bond agent
430 executes or countersigns, so the public may obtain all necessary information concerning those bail

431 bonds for at least one year after the liability of the bail bond surety has been terminated; and

432 (b) any additional information the [insurance] commissioner may reasonably require by
433 rule.

434 (2) Records required to be maintained under Subsection (1) shall be available for
435 examination by the commissioner or [his] the commissioner's representatives during regular
436 business hours.

437 (3) The bail bond surety company shall maintain for three years after receipt all records
438 [forwarded to it by its bail bond agents] of any bail bond executed or countersigned by a bail bond
439 agent appointed by the bail bond surety company.

440 Section 17. Section **31A-35-607** is amended to read:

441 **31A-35-607. Filing of forms -- Department maintains files.**

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

445 (2) [These forms] A form described in Subsection (2) shall be filed:

446 [~~(a) within 30 days of the effective date of this chapter; and~~]

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

448 (a) before the form is first used by the bail bond surety; and

449 (b) if the form is changed after it is filed under Subsection (2)(a).

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

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

454 Section 18. Section **31A-35-608** is amended to read:

455 **31A-35-608. Premiums and authorized charges.**

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

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

460 (b) provide collateral;

461 (c) reimburse himself for actual expenses, as described in Subsection (2), incurred in

462 connection with the bail bond transaction; or

463 (d) to reimburse himself, or to establish a right of action against the principal or any
464 indemnitor, for actual expenses the bail bond surety or bail bond agent incurred;

465 (i) in good faith; and

466 (ii) which were by reason of breach by the defendant of any of the terms of the written
467 agreement under which the undertaking of bail or bail bond was written.

468 (2) (a) [~~If a bail bond agent did not establish a written agreement, or there is only an~~
469 ~~incomplete writing, the~~ A bail bond surety may bring an action in a court of law to enforce its

470 equitable rights against the principal and [his] the principal's indemnitors in exoneration if:

471 (i) a bail bond agent did not establish a written agreement; or

472 (ii) there is only an incomplete writing.

473 (b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

474 (i) the principal sum of the bail bond or undertaking[~~, plus~~]; and

475 (ii) any reasonable expenses that:

476 (A) are verified by receipt [~~and~~];

477 (B) in total do not amount to more than the principal sum of the bail bond or

478 undertaking[~~,~~]; and

479 (C) incurred in good faith by the bail bond surety, its agents, and employees by reason of
480 the principal's breach.

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

484 Section 19. Section **31A-35-701** is amended to read:

485 **31A-35-701. Prohibited acts.**

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

487 (a) solicit business in or about;

488 (i) any place where persons in the custody of the state or any local law enforcement or
489 correctional agency are confined[~~,~~]; or [~~in or about~~]

490 (ii) any court;

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

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

496 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone in
497 ~~[his]~~ the principal's behalf; or

498 (e) engage in any other act prohibited by the commissioner by rule.

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

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

503 (b) a ~~[law enforcement]~~ peace officer;

504 (c) a judge; and

505 ~~[(d) a sheriff, deputy sheriff, or constable; and]~~

506 ~~[(e)]~~ (d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility
507 used for the incarceration of persons.

508 (3) A bail bond agent may not:

509 (a) sign or countersign in blank any bail bond~~[-]~~; or

510 (b) give the power of attorney to, or otherwise authorize~~[-]~~ anyone to ~~2~~ countersign in the
511 bail bond agent's name to ~~[bonds]~~ a bail bond.

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

513 (5) The following persons or members of their immediate families may not solicit business
514 on behalf of a bail bond surety or bail bond agent:

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

517 (b) a ~~[law enforcement]~~ peace officer;

518 (c) a judge; and

519 ~~[(d) a sheriff, deputy sheriff, or constable; and]~~

520 ~~[(e)]~~ (d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility
521 used for the incarceration of persons.

522 Section 20. Section **31A-35-702** is amended to read:

523 **31A-35-702. Early surrender without cause.**

524 (1) ~~[Hf] The bail or bail bond premium shall be returned in full if~~ a bail bond agent without
 525 good cause surrenders a defendant to custody before;

526 ~~(a)~~ (a) the time specified in the undertaking of bail or the bail bond for the appearance of the
 527 defendant~~[-];~~ or ~~[before]~~

528 ~~(b)~~ (b) any other occasion where the presence of the defendant in court is lawfully required~~[-~~;
 529 ~~the bail or bail bond premium shall be returned in full].~~

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

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

533 ~~[(b)]~~ (a) the defendant providing materially false information on the application for bail
 534 or a bail bond;

535 ~~[(c)]~~ (b) the court's increasing the amount of bail beyond sound underwriting criteria
 536 employed by;

537 (i) the bail bond agent; or

538 (ii) the bail bond surety;

539 ~~[(d)]~~ (c) a material and detrimental change in the collateral posted by;

540 (i) the defendant; or ~~[one]~~

541 (ii) a person acting on ~~[his]~~ the defendant's behalf;

542 ~~[(e)]~~ (d) the defendant changing ~~[his]~~ the defendant's address or telephone number without
 543 giving reasonable notice to;

544 (i) the bail bond agent; or

545 (ii) the bail bond surety;

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

548 ~~[(g)]~~ (f) failure by the defendant to appear in court at the appointed time; or

549 ~~[(h)]~~ (g) a finding of guilt against the defendant by a court of competent jurisdiction.

550 Section 21. Section **31A-35-703** is amended to read:

551 **31A-35-703. Disciplinary action.**

552 (1) ~~[Persons or organizations]~~ A person found to be in violation of the statutes or rules
 553 governing the conduct of bail bond agents and bail bond sureties under this chapter ~~[are]~~ is subject
 554 to;

555 (a) disciplinary action by the ~~[insurance]~~ commissioner against ~~[the]~~ that person's:
556 (i) license, if the person is a bail bond surety company or bail bond agent; or
557 (ii) certificate, if the person is a surety insurer; and
558 (b) imposition of civil penalties, as authorized under Title 31A, Chapter 2, Administration
559 of the Insurance Laws.

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

562 Section 22. Section **31A-35-704** is amended to read:

563 **31A-35-704. Submission of bail bond sureties and agents to jurisdiction of court.**

564 By applying for and receiving ~~[certification under]~~ a license or certificate to engage in the
565 bail bond surety insurance business in accordance with this chapter, a bail bond surety ~~[insurers;~~
566 ~~companies, and agents]~~ or bail bond agent:

567 (1) ~~[submit]~~ submits to the jurisdiction of the court;

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

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

573 Section 23. Section **77-20-8.5** is amended to read:

574 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

575 (1) (a) ~~[The sureties]~~ Sureties may at any time prior to a forfeiture of their bail surrender
576 the defendant and obtain exoneration of ~~[their bail by filing written requests at the time of the~~
577 ~~surrender]~~ bail, by notifying the clerk of the court in which the bail was posted of the defendant's
578 surrender. Notification will be done immediately following the surrender by surface mail,
579 electronic mail, or fax.

580 (b) To effect surrender, ~~[certified duplicate copies of the undertaking shall]~~ a certified copy
581 of the surety's undertaking from the court in which it was posted, or, a copy of the bail agreement
582 with the defendant shall be delivered to ~~[a peace officer]~~ the on-duty jailer, who ~~[shall]~~ will detain
583 the defendant in ~~[his]~~ the on-duty jailer's custody as upon a commitment, and shall in writing
584 acknowledge the surrender upon ~~[one]~~ the copy of the undertaking or bail agreement. ~~[This]~~ The
585 certified copy of the undertaking or copy of the bail agreement upon which the acknowledgment

586 of surrender is endorsed shall be filed with the court. The court may then, upon proper application,
587 order the undertaking exonerated and may order a refund of any paid premium, or part of a
588 premium, as it finds just.

589 (2) For the purpose of surrendering the defendant, the sureties may:

590 (a) arrest [him] the defendant:

591 (i) at any time before [they are] the defendant is finally exonerated; and

592 (ii) at any place within the state; and

593 (b) surrender the defendant to any correctional facility in Utah.

594 (3) A surety acting under this section is subject to [~~the provisions of~~] Title 53, Chapter [~~10~~]
595 11, Bail Bond Recovery Act.

596 Section 24. Section **77-20-10** is amended to read:

597 **77-20-10. Grounds for detaining defendant while appealing his conviction --**

598 **Conditions for release while on appeal.**

599 (1) The court shall order that a defendant who has been found guilty of an offense and
600 sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for
601 a writ of certiorari, be detained, unless the court finds:

602 (a) the appeal raises a substantial question of law or fact likely to result in:

603 (i) reversal;

604 (ii) an order for a new trial; or

605 (iii) a sentence that does not include a term of imprisonment in jail or prison;

606 (b) the appeal is not for the purpose of delay; and

607 (c) by clear and convincing evidence presented by the defendant that [~~he~~] the defendant

608 is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,
609 psychological, or financial and economic safety or well-being of any other person or the
610 community if released.

611 (2) If the court makes a finding under Subsection (1) [~~which~~] that justifies not detaining
612 the defendant, the court shall order the release of the defendant, subject to conditions that result
613 in the least restrictive condition or combination of conditions that the court determines will
614 reasonably assure the appearance of the person as required and the safety of any other person and
615 the community. The conditions may include that the defendant:

616 (a) post appropriate bail;

617 (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond
618 Sureties and Agents Act, in an amount necessary to assure the appearance of the defendant as
619 required;

620 (c) (i) execute a written agreement to forfeit, upon failing to appear as required, designated
621 property, including money, as is reasonably necessary to assure the appearance of the defendant;
622 and

623 (ii) post with the court indicia of ownership of the property or a percentage of the money
624 as the court may specify;

625 ~~[(b)]~~ (d) not commit a federal, state, or local crime during the period of release;

626 ~~[(c)]~~ (e) remain in the custody of a designated person who agrees to assume supervision
627 of the defendant and who agrees to report any violation of a release condition to the court, if the
628 designated person is reasonably able to assure the court that the defendant will appear as required
629 and will not pose a danger to the safety of any other person or the community;

630 ~~[(d)]~~ (f) maintain employment, or if unemployed, actively seek employment;

631 ~~[(e)]~~ (g) maintain or commence an educational program;

632 ~~[(f)]~~ (h) abide by specified restrictions on personal associations, place of abode, or travel;

633 ~~[(g)]~~ (i) avoid all contact with the victims of the offense and with any witnesses who
634 testified against the defendant or potential witnesses who may testify concerning the offense if the
635 appeal results in a reversal or an order for a new trial;

636 ~~[(h)]~~ (j) report on a regular basis to a designated law enforcement agency, pretrial services
637 agency, or other designated agency;

638 ~~[(i)]~~ (k) comply with a specified curfew;

639 ~~[(j)]~~ (l) not possess a firearm, destructive device, or other dangerous weapon;

640 ~~[(k)]~~ (m) not use alcohol, or any narcotic drug or other controlled substances except as
641 prescribed by a licensed medical practitioner;

642 ~~[(l)]~~ (n) undergo available medical, psychological, or psychiatric treatment, including
643 treatment for drug or alcohol dependency, and remain under the supervision of or in a specified
644 institution if required for that purpose;

645 ~~[(m)] execute an agreement to forfeit, upon failing to appear as required, designated~~
646 ~~property, including money, as is reasonably necessary to assure the appearance of the defendant,~~
647 ~~and post with the court indicia of ownership of the property or a percentage of the money as the~~

648 ~~court may specify;]~~

649 ~~[(n) execute a bail bond with solvent sureties in an amount necessary to assure the~~
650 ~~appearance of the defendant as required;]~~

651 (o) return to custody for specified hours following release for employment, schooling, or
652 other limited purposes;

653 (p) satisfy any other condition that is reasonably necessary to assure the appearance of the
654 defendant as required and to assure the safety of any other person and the community; and

655 (q) if convicted of committing a sexual offense or an assault or other offense involving
656 violence against a child 17 years of age or younger, is limited or denied access to any location or
657 occupation where children are, including but not limited to:

658 (i) any residence where children are on the premises;

659 (ii) activities, including organized activities, in which children are involved; and

660 (iii) locations where children congregate, or where a reasonable person should know that
661 children congregate.

662 (3) The court may, in its discretion, amend an order granting release to impose additional
663 or different conditions of release.

664 Section 25. Section **77-20b-101** is amended to read:

665 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
666 **failure of timely notice.**

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

670 (a) mail notice of nonappearance with a court certified copy of the undertaking of bail by
671 certified mail, return receipt requested, within 30 days to the address of the surety who posted the
672 bond; and

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

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

678 (3) If notice of nonappearance is not mailed to a surety, other than the defendant, in

679 accordance with Subsection (1) or (2), the surety is relieved of further obligation under the bond
680 if~~[-(a)]~~ the surety's current name and address are on the bail bond in the court's file~~[-and]~~.

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

682 (4) (a) A bond ordered forfeited by a magistrate of the court may not be reinstated without
683 the mutual agreement of the surety and the court.

684 (b) If the defendant is arrested pursuant to a failure to appear on the original charges and
685 then released for any reason, the original bond shall be exonerated.

686 Section 26. Section **77-20b-102** is amended to read:

687 **77-20b-102. Time for bringing defendant to court.**

688 (1) If notice of nonappearance has been mailed to a surety under Section 77-20b-101, the
689 surety may bring the defendant before the court or surrender the defendant into the custody of a
690 county sheriff within the state within six months of the date of nonappearance, during which time
691 a forfeiture action on the bond may not be brought.

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

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

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

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

698 Section 27. Section **77-20b-103** is amended to read:

699 **77-20b-103. Defendant in custody -- Notice to prosecutor.**

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

704 (2) If the defendant is subject to extradition or other means by which the state can return
705 the defendant to the court's custody, and the surety gives notice under Subsection (1), the surety's
706 bond shall be exonerated:

707 (a) if the prosecutor elects in writing not to extradite the defendant immediately; and

708 (b) if the prosecutor elects in writing to extradite the defendant, to the extent the bond
709 exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to the

710 court's custody, upon the occurrence of the earlier of:

711 [(a)] (i) the prosecuting attorney's lodging a detainer on the defendant; or

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

714 Section 28. Section **77-20b-104** is amended to read:

715 **77-20b-104. Forfeiture of bail.**

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

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

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

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

723 (a) the defendant failed to appear as required;

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

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

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

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

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

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

737 (b) specify the amount of bail forfeited;

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

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

740 (5) A prosecutor may immediately commence collection proceedings to execute a

741 judgment of bond forfeiture against the [property] assets of the surety.

742 Section 29. **Repealer.**

743 This act repeals:

744 Section **77-20-6, Release on approval of undertaking.**

Legislative Review Note
as of 2-9-00 11:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel