

BAIL BOND AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Code of Criminal Procedure and the Insurance Code regarding bail bond surety companies by providing procedures for actions against bail bond surety companies for failure to pay bail bond forfeitures. This act also amends provisions regarding the surety's and the prosecutor's functions if a defendant fails to appear, and procedures for exoneration of the bond.

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

AMENDS:

77-20-8.5, as last amended by Chapters 1 and 259, Laws of Utah 2000

77-20b-101, as last amended by Chapter 259, Laws of Utah 2000

ENACTS:

31A-35-504, Utah Code Annotated 1953

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

Section 1. Section **31A-35-504** is enacted to read:

31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and revocation of bail bond surety license.

(1) As used in this section:

(a) "Company" means a bail bond surety company.

(b) "Judgment" means a judgment of bond forfeiture issued under Section 77-20b-104.

(2) A company shall pay a judgment not later than 15 days following receipt of notice from a prosecutor of the entry of the judgment.

(3) A prosecutor who does not receive proof of or notice of payment of the judgment within 15 days after the prosecutor sends notice to the company of a judgment shall notify the commissioner of the failure to pay the judgment.

28 (4) (a) The commissioner shall suspend the license of the company not later than five days
29 following receipt of notice from a prosecutor of the company's failure to pay the judgment.

30 (b) The suspension shall be for 60 days and shall be in accordance with Section
31 31A-35-502.

32 (5) (a) If the prosecutor receives proof of or notice of payment of the judgment during the
33 suspension period under Subsection (4), the prosecutor shall immediately notify the commissioner
34 of the payment. The notice shall be in writing and by the most expeditious means possible, which
35 may be via facsimile or any other electronic means, followed by the prosecutor's mailing of the
36 original written notification to the commissioner.

37 (b) The commissioner shall vacate any suspension of the company's license due solely to
38 the failure to pay a judgment, which is then paid under Subsection (5)(a), not later than five days
39 after the commissioner receives the original written notification from the prosecutor, regardless
40 of whether the prosecutor also sent the notification via facsimile or other electronic means.
41 However, any suspension under this Subsection (5) may not be for fewer than 14 days.

42 (c) The commissioner may not vacate any suspension under this section for fewer than 14
43 days after receiving notification under Subsection (3) of failure to pay a judgment, even if the
44 suspension for 14 days causes the total suspension of a company's license to extend beyond 60
45 days because the company had failed to pay a prior judgment and the commissioner had suspended
46 the company's license based on that prior failure to pay.

47 (6) The commissioner may not vacate a suspension under Subsection (4) if at the time the
48 commissioner receives notification under Subsection (5)(a) of payment of a judgment:

49 (a) at least one other unpaid judgment against the company exists;

50 (b) the commissioner has received notice under Subsection (2) of the company's failure
51 to pay that judgment; and

52 (c) the commissioner has not received notice under Subsection (5)(a) of the company's
53 payment of that outstanding judgement.

54 (7) The commissioner shall commence an administrative proceeding to revoke the license
55 of a company that fails to pay a judgment of bond forfeiture before the expiration date of the
56 suspension period.

57 (8) This section does not restrict or otherwise affect the rights of a prosecutor to commence
58 collection proceedings under Subsection 77-20b-104(5).

59 Section 2. Section **77-20-8.5** is amended to read:

60 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

61 (1) (a) Sureties may at any time prior to a [~~forfeiture of their bail~~] defendant's failure to
62 appear surrender the defendant and obtain exoneration of bail, by notifying the clerk of the court
63 in which the bail was posted of the defendant's surrender and requesting exoneration. Notification
64 [~~will~~] shall be [~~done~~] made immediately following the surrender by surface mail, electronic mail,
65 or fax.

66 (b) To effect surrender, a certified copy of the surety's undertaking from the court in which
67 it was posted[;] or[;] a copy of the bail agreement with the defendant shall be delivered to the
68 on-duty jailer, who [~~will~~] shall detain the defendant in the on-duty jailer's custody as upon a
69 commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking or
70 bail agreement. The certified copy of the undertaking or copy of the bail agreement upon which
71 the acknowledgment of surrender is endorsed shall be filed with the court. The court may then,
72 upon proper application, order the undertaking exonerated and may order a refund of any paid
73 premium, or part of a premium, as it finds just.

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

75 (a) arrest the defendant:

76 (i) at any time before the defendant is finally exonerated; and

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

78 (b) surrender the defendant to any [~~correctional facility~~] county jail booking facility in
79 Utah.

80 (3) An arrest under this section is not a basis for exoneration of the bond under Section
81 77-20b-101.

82 [~~(3)~~] (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond
83 Recovery Act.

84 Section 3. Section **77-20b-101** is amended to read:

85 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
86 **failure of timely notice.**

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

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

92 (b) notify the surety of the name, address, telephone number, and fax number of the
93 prosecutor; and

94 ~~[(b)]~~ (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office
95 at the same time notice is sent under Subsection (1)(a).

96 (2) ~~[If notice is not provided in accordance with Subsection (1)(a), the]~~ The prosecutor
97 may mail notice of nonappearance by certified mail, return receipt requested, to the address of the
98 surety within ~~[seven]~~ 37 days after the ~~[end of the 30-day period under Subsection (1)(a)]~~ date of
99 the defendant's failure to appear.

100 (3) If notice of nonappearance is not mailed to a surety, other than the defendant, in
101 accordance with Subsection (1) or (2), the surety is relieved of further obligation under the bond
102 if the surety's current name and address are on the bail bond in the court's file.

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

105 (b) If the defendant is arrested and booked into a county jail booking facility pursuant to
106 a warrant for failure to appear on the original charges ~~[and then released for any reason, the~~
107 ~~original bond shall be exonerated.]~~, the surety may file a motion with the court to exonerate the
108 bond. The surety shall deliver a copy of the motion to the prosecutor.

109 (c) Unless the court makes a finding of good cause why the bond should not be exonerated,
110 it shall exonerate the bond if:

111 (i) the surety has delivered the defendant to the county jail booking facility in the county
112 where the original charge is pending;

113 (ii) the defendant has been released on a bond secured from a subsequent surety for the
114 original charge and the failure to appear;

115 (iii) after an arrest by the surety, or an arrest in which the surety substantially assisted, the
116 defendant has escaped from jail or has been released on the defendant's own recognizance,
117 pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release
118 under Section 17-22-5.5; or

119 (iv) the surety has transported or agreed to pay for the transportation of the defendant from
120 a location outside of the county back to the county where the original charge is pending, and the

121 payment is in an amount equal to government transportation expenses listed in Section 76-3-201.
122 (d) Under circumstances not otherwise provided for in this section, the court may
123 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
124 motion and there is good cause for the bond to be exonerated.

Legislative Review Note
as of 1-12-01 2:35 PM

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

Office of Legislative Research and General Counselo