

BAIL AND BAIL BOND SURETY RELATED AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

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

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

AMENDS:

- 31A-35-101**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-102**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-104**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-202**, as last amended by Chapter 131, Laws of Utah 1999
- 31A-35-301**, as last amended by Chapter 131, Laws of Utah 1999
- 31A-35-401**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-402**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-404**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-405**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-406**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-501**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-502**, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-503**, as enacted by Chapter 293, Laws of Utah 1998

- 31A-35-602, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-603, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-604, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-607, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-608, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-701, as last amended by Chapter 131, Laws of Utah 1999
- 31A-35-702, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-703, as enacted by Chapter 293, Laws of Utah 1998
- 31A-35-704, as enacted by Chapter 293, Laws of Utah 1998
- 77-20-8.5, as last amended by Chapter 257, Laws of Utah 1998
- 77-20-10, as enacted by Chapter 160, Laws of Utah 1988
- 77-20b-101, as enacted by Chapter 293, Laws of Utah 1998
- 77-20b-102, as enacted by Chapter 293, Laws of Utah 1998
- 77-20b-103, as enacted by Chapter 293, Laws of Utah 1998
- 77-20b-104, as enacted by Chapter 293, Laws of Utah 1998

REPEALS:

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

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

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

CHAPTER 35. BAIL BOND SURETIES AND AGENTS ACT

31A-35-101. Title.

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

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

31A-35-102. Definitions.

As used in this chapter:

- (1) "Bail bond" means a bond for a specified monetary amount [~~which~~] that is:
 - (a) executed by a [~~qualified certificate holder under this chapter~~] bail bond agent licensed in accordance with Section 31A-35-401; and

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

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

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

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

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

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

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

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

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

(ii) a surety insurer; and

(b) issues bonds to secure:

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

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

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

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

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

(iii) 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 a service described in Subsection (4)(a).

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

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

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

(ii) apprehend a defendant or surrender a defendant to custody~~[-,];~~ or

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

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

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

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

~~[(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 bail bond surety to hold the bail bond surety harmless from loss incurred as a result of executing a bail 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.]

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

~~[(H)]~~ (10) "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.]~~

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

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

(b) receives a certificate under this title; and

(c) issues bail bonds.

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

that:

(a) has Utah as its home state; or

(b) operates a branch in Utah.

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

31A-35-104. Rulemaking authority.

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

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

31A-35-202. Board responsibilities.

The board shall:

(1) meet:

(a) at least quarterly; and

(b) at the call of the chair;

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

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

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

(ii) a certificate;

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

- (c) unprofessional conduct;
- (d) procedures for hearing and resolving allegations of unprofessional conduct; and
- (e) sanctions for unprofessional conduct;
- (3) screen;
 - (a) bail bond surety company [~~certificate applicants and applications~~] license applications; and
 - (b) persons applying for a bail bond surety company license;
- (4) recommend to the [~~insurance~~] commissioner action regarding the granting, renewing, suspending, revoking, and reinstating of bail bond surety company [~~certificates~~] license; and
 - (5) (a) conduct investigations of allegations of unprofessional conduct on the part of persons or bail bond sureties involved in the business of bail bond surety insurance; and
 - (b) provide the results of the investigations described in Subsection (5)(a) to the [~~insurance~~] commissioner with recommendations for:
 - (i) action; and
 - (ii) any appropriate sanctions.

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

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

- (1) The 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~~] licensure under this chapter;
 - (c) take action regarding a [~~certificate~~] license, including suspension or revocation; and
 - (d) maintain and publish a current list of licensed bail bond surety companies and agents.
- (2) The commissioner may establish fees for the issuance, renewal, and reinstatement of a bail bond surety company [~~certificates of authority under~~] license in accordance with Section 63-38-3.2.

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

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

Limitations.

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

~~for and receiving a certificate of authority issued] unless that person:~~

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

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

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

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

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

~~(2) [An applicant for a certificate] A person applying for a bail bond surety company license 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] in accordance with 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] from a bail bond surety company shall be deposited in a restricted account created in Section 31A-35-407.~~

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

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

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

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

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

(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;~~] company may only issue bail 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)]~~ (2) 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)]~~ (3) A bail bond surety [company] may not allow any person who ~~[does not hold a license under Title 31A, Insurance Code, to solicit or]~~ is not a bail bond agent to engage in the bail bond surety business on the [company's] bail bond surety's behalf, except for individuals:

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

(i) a bail bond surety company; or

(ii) a bail bond agent; and

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

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

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

(1) (a) A ~~[letter of credit]~~ bail bond surety company that pledges the assets of a letter of credit from a Utah depository institution in connection with a judicial proceeding shall maintain an irrevocable letter of credit with a minimum face value of ~~[\$250,000]~~ \$300,000 assigned to the state from a Utah ~~[financial]~~ depository institution.

(b) Notwithstanding Subsection (1)(a), a bail bond surety company described in Subsection (1)(a) that is licensed under this chapter as of December 31, 1999, shall maintain an irrevocable letter of credit with a minimum face value of \$250,000 assigned to the state from a Utah depository institution.

(2) (a) A ~~[property]~~ bail bond surety company that pledges personal or real property, or both, as security for a bail bond in connection with a judicial proceeding shall maintain:

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

(I) reviewed by a certified public accountant[;]; and
(II) showing a net worth of at least [~~\$250,000~~] \$300,000, at least [~~\$50,000~~] \$100,000 of which is in liquid assets; or

(B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed under this chapter as of December 31, 1999, a current financial statement:

(I) reviewed by a certified public accountant; and
(II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid assets;
~~[(b)]~~ (ii) a copy of the applicant's federal income tax return for the preceding two years; and
~~[(c)]~~ (iii) for each parcel of real property owned by the applicant[;] and included in net worth calculations:

(A) a title letter; and

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

(b) For purposes of this Subsection (2), only real or personal property located in Utah may be included in the net worth of the bail bond surety company.

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

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

(b) the surety insurer:

(i) issues bail bonds;

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

~~[(b) authorized]~~ (iii) is granted a certificate 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.

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

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

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

(1) Upon a determination by the board that [~~the applicant has met~~] a person applying for a

bail bond surety company license meets the requirements for issuance of a ~~[certificate of authority]~~ license under this chapter, the ~~[insurance]~~ commissioner shall issue to ~~[the applicant a]~~ that person a bail bond surety company license ~~[in the form of a certificate of authority]~~.

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

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

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

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

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

~~(b) The hearing described in Subsection (2)(a) 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] (3) A decision under this section is subject to review under Title 63, Chapter 46b, Administrative Procedures Act.~~

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

31A-35-406. 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]~~ To renew its license under this chapter, on or before the last day of the month in which the [certificate of authority] license expires[-] a bail bond surety company shall:

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

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

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

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

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

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

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

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

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

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

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

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

(5) If a ~~[certificate was]~~ bail bond surety company license is suspended, the applicant may not submit an application for a ~~[certificate]~~ bail bond surety company license 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 11. Section **31A-35-501** is amended to read:

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

(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]~~ bail bond surety company license pending proceedings for revocation or other action.

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

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

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

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

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

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

(1) the alleged violation;

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

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

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

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

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

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

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

(d) revoke the ~~[certificate]~~ license.

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

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

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

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

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

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

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

(i) was not personally at fault; and

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

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

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

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

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

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

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

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

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

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

Section 15. Section **31A-35-603** is amended 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 bail bond.

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

(b) Before any judgment of 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:

(i) the bail bond has been exonerated; and

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

(b) The receipt ~~[must]~~ required by Subsection (4)(a) shall 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:

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

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

(6) If the bail 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] person retaining possession or disposing of the property shall maintain a written record of the collateral, including any disposition.

(7) (a) If a document [which] that 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 described in Subsection (7)(a) 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:

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

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

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

31A-35-604. Records.

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

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

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

(2) Records required to be maintained under Subsection (1) shall be available for examination

by the commissioner or ~~[his]~~ the commissioner's 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]~~ of any bail bond executed or countersigned by a bail bond agent appointed by the bail bond surety company.

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

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

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

(2) ~~[These forms]~~ A form described in Subsection (2) 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.]~~

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

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

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

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

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

(i) in good faith; and

(ii) 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~~] A bail bond surety may bring an action in a court of law to enforce its equitable rights against the principal and [~~his~~] the principal's indemnitors in exoneration if:

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

(ii) there is only an incomplete writing.

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

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

(ii) any reasonable expenses that:

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

(B) in total do not amount to more than the principal sum of the bail bond or undertaking[~~;~~];
and

(C) 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 bail bond surety [~~he~~] the bail bond agent represents.

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

31A-35-701. Prohibited acts.

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

(a) solicit business in or about:

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

(ii) 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;

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

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

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

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

(c) a judge; and

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

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

(3) A bail bond agent may not:

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

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

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

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

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

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

(c) a judge; and

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

~~[(e)]~~ (d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility

used for the incarceration of persons.

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

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

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

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

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

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

(i) the bail bond agent; or

(ii) the bail bond surety;

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

(i) the defendant; or [one]

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

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

(i) the bail bond agent; or

(ii) the bail bond surety;

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

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

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

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

31A-35-703. Disciplinary action.

(1) ~~[Persons or organizations]~~ A person 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]~~ is subject to:

(a) disciplinary action by the ~~[insurance]~~ commissioner against ~~[the]~~ that person's:

(i) license, if the person is a bail bond surety company or bail bond agent; or

(ii) certificate, if the person is a surety insurer; and

(b) 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 22. Section **31A-35-704** is amended to read:

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

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

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

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

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

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

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

(1) (a) ~~[The sureties]~~ Sureties may at any time prior to a forfeiture of their bail surrender the defendant and obtain exoneration of ~~[their bail by filing written requests at the time of the surrender]~~

bail, by notifying the clerk of the court in which the bail was posted of the defendant's surrender and requesting exoneration. Notification will be done immediately following the surrender by surface mail, electronic mail, or fax.

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

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

(a) arrest [~~him~~] the defendant:

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

(ii) at any place within the state; and

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

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

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

77-20-10. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.

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

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

(i) reversal;

(ii) an order for a new trial; or

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

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

(c) by clear and convincing evidence presented by the defendant that ~~[he]~~ the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

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

(a) post appropriate bail;

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

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

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

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

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

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

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

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

~~[(g)]~~ (i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the offense if the appeal

results in a reversal or an order for a new trial;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[~~;~~ ~~and~~] ~~(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.]~~

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

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

Section 26. Section **77-20b-102** is amended 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 or surrender the defendant into the custody of a county sheriff within the state 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 27. Section **77-20b-103** is amended 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:

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

(b) if the prosecutor elects in writing to extradite the defendant, 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)]~~ (i) the prosecuting attorney's lodging a detainer on the defendant; or

~~[(b)]~~ (ii) 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 28. Section **77-20b-104** is amended 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]~~ assets of the surety.

Section 29. Repealer.

This act repeals:

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