

Senator Terry R. Spencer proposes to substitute the following bill:

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, procedures for exoneration of the bond, and procedures for transportation of the defendant.

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

77-20b-104, 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) A company shall pay a judgment not later than 15 days following service of notice upon the company from a prosecutor of the entry of the judgment.



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

(c) If notice of entry of judgment is served upon the company by mail, three additional days are added to the 15 days provided in Subsections (2)(a) and (2)(b).

§ (d) A PROSECUTOR SHALL NOT PROCEED UNDER SUBSECTION (2)(b) IF A COMPANY PROVIDES NOTICE OF A MOTION TO SET ASIDE JUDGMENT OR NOTICE OF AN APPLICATION FOR AN EXTRAORDINARY WRIT PRIOR TO THE END OF THE PAYMENT PERIOD. §

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

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

(4) (a) If the prosecutor receives proof of or notice of payment of the judgment during the suspension period under Subsection (3), the prosecutor shall immediately notify the commissioner of the payment. The notice shall be in writing and by the most expeditious means possible, which may be via facsimile or any other electronic means, followed by the prosecutor's mailing of the original written notification to the commissioner.

(b) The commissioner shall vacate any suspension of the company's license due solely to the failure to pay a judgment, which is then paid under Subsection (4)(a), not later than five days after the commissioner receives the original written notification from the prosecutor, regardless of whether the prosecutor also sent the notification via facsimile or other electronic means. However, any suspension under this Subsection (4) may not be for fewer than 14 days.

(c) The commissioner may not vacate any suspension under this section for fewer than 14 days after receiving notification under Subsection (2) of failure to pay a judgment, even if the suspension for 14 days causes the total suspension of a company's license to extend beyond 60 days because the company had failed to pay a prior judgment and the commissioner had suspended the company's license based on that prior failure to pay.

(5) The commissioner may not vacate a suspension under Subsection (3) if at the time the commissioner receives notification under Subsection (4)(a) of payment of a judgment:

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

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

(c) the commissioner has not received notice under Subsection (4)(a) of the company's payment of that outstanding judgement.

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

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

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

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

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

(b) To effect surrender, 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 the on-duty jailer, who ~~[with]~~ shall detain the defendant in the on-duty jailer's custody as upon a commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking or bail agreement. 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 the defendant:

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

(ii) at any place within the state; and

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

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

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

Section 3. 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) notify the surety of the name, address, telephone number, and fax number of the prosecutor;

~~[(b)]~~ (c) 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)[-]; and

(d) ensure that the name, address, and telephone number of the surety is stated on the bench warrant.

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

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

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

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

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

(ii) the defendant has been released on a bond secured from a subsequent surety for the

119 original charge and the failure to appear;

120 (iii) after an arrest § ~~[by the surety, or an arrest in which the surety substantially assisted]~~ § .

120a the

121 defendant has escaped from jail or has been released on the defendant's own recognizance,

122 pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release

123 under Section 17-22-5.5; or

124 (iv) the surety has transported or agreed to pay for the transportation of the defendant from

125 a location outside of the county back to the county where the original charge is pending, and the

126 payment is in an amount equal to government transportation expenses listed in Section 76-3-201.

127 (d) Under circumstances not otherwise provided for in this section, the court may

128 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's

129 motion and there is good cause for the bond to be exonerated.

130 (e) If a surety's bond has been exonerated under this section and the surety remains liable

131 for the cost of transportation of the defendant, the surety may take custody of the defendant for the

132 purpose of transporting the defendant to the jurisdiction where the charge is pending.

133 Section 4. Section **77-20b-104** is amended to read:

134 **77-20b-104. Forfeiture of bail.**

135 (1) If a surety fails to bring the defendant before the court within the time provided in

136 Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

137 (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the

138 surety of the defendant's nonappearance; and

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

140 (2) A court shall enter judgment of bail forfeiture without further notice if it finds by a

141 preponderance of the evidence:

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

143 (b) the surety was given notice of the defendant's nonappearance in accordance with

144 Section 77-20b-101;

145 (c) the surety failed to bring the defendant to the court within the six-month period under

146 Section 77-20b-102; and

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

148 (3) If the surety shows by a preponderance of the evidence that it has failed to bring the

149 defendant before the court because the defendant is deceased through no act of the surety, the court

150 may not enter judgment of bail forfeiture.

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

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

156 (b) specify the amount of bail forfeited;

157 (c) grant the ~~[forfeited bail to the prosecuting entity]~~ forfeiture of the bail; and

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

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