

PLEASE NOTE:

THIS DOCUMENT INCLUDES BOTH THE BILL AND ALSO A TRANSMITTAL LETTER THAT CONTAINS PASSED AMENDMENTS BUT NOT INCORPORATED INTO THE BILL.



UTAH STATE SENATE

UTAH STATE CAPITOL COMPLEX • 320 STATE CAPITOL
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March 10, 2011

Madam Speaker:

The Senate passed **H.B. 370**, BAIL BOND AMENDMENTS, by Representative G. Hughes, with the following amendments:

Page 3a House Floor Amendments dated 3-8-211:

Line 85 After "to and including" delete "the next execution of" and insert "the defendant's appearance to commence serving the"

and it is transmitted to the House for consideration.

Respectfully,

A handwritten signature in cursive script that reads "Annette B. Moore".

Annette B. Moore
Secretary of the Senate

BAIL BOND AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code and the Code of Criminal Procedure regarding bail surety and bail bond companies.

Highlighted Provisions:

This bill:

▶ amends the procedure for the court providing notice to the surety when a defendant who has posted bail fails to appear;

~~↔ [↔ requires that the clerk of the court notify the prosecutor and the surety when bail has been exonerated;]~~ ↔

▶ provides that bail will be exonerated in ↔ specified ↔ cases ↔ , including ↔ ↔ when the defendant appears at the next court hearing and ↔ where the court has not scheduled any

action in the case within ↔ ~~[365 days]~~ 18 months ↔ after the most recent docket activity; and

▶ provides licensure qualifications, including training and hours of experience, for bail bond sureties ↔ and agencies ↔ .

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-7, as last amended by Laws of Utah 2006, Chapter 332



H.B. 370

28 77-20b-101, as last amended by Laws of Utah 2006, Chapter 332

29 ENACTS:

30 31A-35-401.5, Utah Code Annotated 1953

31

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

33 Section 1. Section 31A-35-401.5 is enacted to read:

34 **31A-35-401.5. Additional licensure requirements for a bail bond surety company.**

35 (1) A person applying for licensure as a bail bond surety or agency for the first time
36 shall, in addition to the requirements of Section 31A-35-401, provide proof that at least one
37 principal of the bail bond surety or agency will have a minimum of 2,000 hours of experience
38 working as an employee of a bail bond surety company as a licensed bail bond agent.

39 (2) The applicant shall provide proof of the experience claimed under Subsection (1),
40 including providing:

41 (a) the exact details of the character and nature of the experience on a form provided by
42 the department;

43 (b) a statement by each employer verifying the number of hours the applicant worked
44 for the employer; and

45 (c) (i) federal income reporting forms that account for the wages for hours claimed or
46 documented approval of the claimed hours by the insurance commissioner; and

47 (ii) the total of 2,000 hours may be proved in part by federal income reporting forms
48 and in part by approval by the insurance commissioner.

49 (3) The burden of proving the hours of experience as required in this section is upon
50 the applicant.

51 (4) ~~H~~→ ~~[A person]~~ **An individual** ~~←H~~ who is applying for licensure under this chapter for
51a the first time shall

52 have completed a training program of not less than four hours that is approved by the ~~H~~→ **[board]**
52a commissioner ~~←H~~ and

53 includes:

54 (a) definition of a bail bond, jail procedures regarding bail bonds, court procedures
55 regarding bail bonds, liability of a bail bond, the taking of collateral, returning collateral, trust
56 account separation of funds, fee structure, the 10 percent rule, agent liability, the prohibition on
57 soliciting on county or state property, and the delivery of a bail bond;

58 (b) state laws and administrative rules regarding the operation of a bail bond business;

59 (c) the rights of an accused person; and
 60 (d) the ethical requirements of a bail bond business.

61 (5) (a) On and after January 1, 2012, an applicant for renewal of a license under this
 62 chapter shall have completed during the prior year two hours of continuing education.

63 (b) The insurance commissioner shall implement the continuing education requirement
 64 under this Subsection (5) pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking
 65 Act.

66 Section 2. Section 77-20-7 is amended to read:

67 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
 68 **if charges not filed.**

69 (1) (a) ~~Ĥ→~~ **[The] Except as provided in Subsection (1)(b), the ←Ĥ** principal and the
 69a sureties on the written undertaking are liable on the
 70 undertaking during all proceedings and for all court appearances required of the defendant up
 71 to and including the surrender of the defendant ~~Ĥ→~~ **[in execution of any sentence imposed] for**
 71a **sentencing, ←Ĥ**
 72 irrespective of any contrary provision in the undertaking. Any failure of the defendant to
 73 appear ~~Ĥ→~~ **[up to] [and including execution of sentence] [the sentencing] ←Ĥ** when required is a
 73a breach of the conditions of
 74 the undertaking or bail and subjects it to forfeiture ~~Ĥ→~~ **[irrespective] regardless ←Ĥ** of whether
 74a or not notice of
 75 appearance was given to the sureties ~~Ĥ→~~ **[upon] Upon sentencing, [and] the bond**
 75a1 **shall be exonerated without**
 75a **motion ←Ĥ .**

75b ~~Ĥ→~~ **(b) If the sentence includes a commitment to a jail or prison, the bond shall be exonerated**
 75c **when the defendant appears at the appropriate jail or prison, unless the judge doesn't require**
 75d **the defendant to begin the commitment within seven days, in which case the bond is**
 75e **exonerated upon sentencing.**

76 ~~(b)~~ **(c) ←Ĥ** For purposes of this section, an order of the court accepting a plea in abeyance
 77 agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in
 78 Abeyance, is considered to be the same as a sentencing upon a guilty plea.

79 ~~Ĥ→~~ **(c) (d) ←Ĥ** Any suspended or deferred sentencing is not the responsibility of the surety
 79a and the
 80 bond is exonerated without any motion, upon acceptance of the court and the defendant of a
 81 plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred
 82 sentencing reviews or any other deferred sentencing agreement.

83 ~~Ĥ→~~ [(d)] (e) ~~←Ĥ~~ If a surety issues a bond after the ~~Ĥ→~~ [execution of sentence]
83a sentencing ~~←Ĥ~~ , the surety is liable on the
84 undertaking ~~Ĥ→~~ [f] **during all proceedings and for all court appearances**
84a **required of the defendant up [f]**
85 [f] **to and including the next execution of sentence imposed under Subsection [77-20-7](1) [f] and**
85a1 **[until the**
85a **next court hearing. Upon appearance of the defendant, the bond shall be exonerated without**
85b **motion**] ~~←Ĥ~~ .
86 (2) If no information or indictment charging a person with an offense is filed in court
87 within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a
88 person from conditions of release at the person's request, and the bond or undertaking is
89 exonerated without further order of the court unless the prosecutor requests an extension of

90 time before the end of the 120-day period by:

- 91 (a) filing a notice for extension with the court; and
 92 (b) serving the notice for extension upon the sureties and the person or his attorney.
 93 (3) A court may extend bail and conditions of release for good cause.
 94 (4) Subsection (2) does not prohibit the filing of charges against a person at any time.
 95 (5) If the court does not set on a calendar any hearings on a case within

95a ~~H~~→ [365 days] **18 months** ←~~H~~ of the
 96 last court docket activity on a case, the undertaking of bail is exonerated without motion.

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

98 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
 99 **failure of timely notice.**

100 (1) If a defendant who has posted bail fails to appear before the appropriate
 100a court ~~H~~→ [~~when~~] as ←~~H~~
 101 ~~required [and the court chooses to order forfeiture of the bail], the court shall~~ ~~H~~→ **within 30 days of**
 101a **the failure to appear** ←~~H~~ issue a bench

102 warrant that includes the original case number. The court shall also direct that the surety be
 103 given notice of the nonappearance. The clerk of the court shall:

104 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
 105 days to the address of the surety [~~or its agent as listed on the bond~~];

106 (b) notify the surety [~~or its agent~~] as listed on the bond of the name, address, and
 107 telephone number[~~, and fax number~~] of the prosecutor;

108 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at
 109 the same time notice is sent under Subsection (1)(a); and

110 ~~H~~→ [f] (d) **ensure that the name, address, and telephone number of the surety or its**
 110a **agent as**
 111 **listed on the bond is stated on the bench warrant. [f]**

112 [~~(d)~~](e) ←~~H~~ mail notice of the failure to appear to the bail ~~H~~→ [~~producer's~~] ←~~H~~ agent if the
 112a surety is
 113 different than the producer's agent.

114 (2) The prosecutor may mail notice of nonappearance by certified mail, return receipt
 115 requested, to the address of the surety [~~or its agent~~] as listed on the bond within 37 days after
 116 the date of the defendant's failure to appear.

117 (3) If notice of nonappearance is not mailed to a surety [~~or its agent~~] as listed on the
 118 bond, other than the defendant, in accordance with Subsection (1) or (2), the surety [~~is~~] and its
 119 agent are relieved of further obligation under the bond ~~H~~→ [f] **if the surety's current**
 119a **name and address**

120 **or the current name and address of the surety's agent are on the bail bond in the**
 120a **court's file [f] ←~~H~~ .**

121 (4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled
122 court appearance, the court may reinstate the bond without further notice to the bond company.

123 (ii) If the defendant, while in custody, appears on the case for which the bond was
124 posted, the court may not reinstate the bond without the consent of the bond company.

125 (b) If a defendant fails to appear within seven days after a scheduled court appearance,
126 the court may not reinstate the bond without the consent of the surety.

127 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
128 to a warrant for failure to appear on the original charges ~~[, the surety may file a motion with the~~
129 ~~court to] and the court is notified of the arrest, or the court recalls the warrant~~ ~~H→ [for any reason]~~
129a ~~due to the defendant's having paid the fine and~~ ~~←H~~

130 ~~prior to entry of judgment of forfeiture, the court shall exonerate the bond. [The surety shall~~
131 ~~deliver a copy of the motion to the prosecutor.]~~ ~~H→ [The clerk of the court shall notify the~~
132 ~~prosecutor and the surety that the bond has been exonerated]~~ ~~←H~~ .

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

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

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

139 (iii) after an arrest, the defendant has escaped from jail or has been released on the
140 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
141 capacity, or by a sheriff's release under Section 17-22-5.5;

142 (iv) the surety has transported or agreed to pay for the transportation of the defendant
143 from a location outside of the county back to the county where the original charge is pending,
144 and the payment is in an amount equal to government transportation expenses listed in Section
145 76-3-201; ~~H→ [f] or [j]~~

146 ~~[(v) or the warrant is recalled for any reason; or]~~

147 ~~[f] (v) [j] [(vi)]~~ ~~←H~~ the surety demonstrates by a preponderance of the evidence that:

148 (A) at the time the surety issued the bond, it had made reasonable efforts to determine
149 that the defendant was legally present in the United States;

150 (B) a reasonable person would have concluded, based on the surety's determination,
151 that the defendant was legally present in the United States; and

152 (C) the surety has failed to bring the defendant before the court because the defendant
153 is in federal custody or has been deported.

154 (e) Under circumstances not otherwise provided for in this section, the court may
155 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
156 motion and there is good cause for the bond to be exonerated.

157 (f) If a surety's bond has been exonerated under this section and the surety remains
158 liable for the cost of transportation of the defendant, the surety may take custody of the
159 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
160 pending.

Legislative Review Note
as of 2-28-11 4:02 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 370

SHORT TITLE: **Bail Bond Amendments**

SPONSOR: **Hughes, G.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Provisions of this bill could result in significant losses in General Fund revenue from forfeited bonds. The magnitude of losses will depend on the number of exonerated bonds that otherwise would have been forfeited.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

First time applicants for a license as a bail bond surety or agency, will have additional requirements.