

BAIL AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill modifies criminal procedure provisions regarding bail and bail security.

Highlighted Provisions:

This bill:

- ▶ revises specified terms, including adding the use of the terms "bail bond" and "surety agency" to replace current terms;
 - ▶ changes specified licensure requirements;
 - ▶ modifies certain provisions regarding bail charges;
 - ▶ amends liability provisions regarding a bail bond producer and a bail bond agency;
- and
- ▶ amends record maintenance requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-35-102, as last amended by Laws of Utah 2003, Chapter 298

31A-35-103, as last amended by Laws of Utah 2007, Chapter 309

31A-35-104, as last amended by Laws of Utah 2000, Chapter 259



- 28 **31A-35-201**, as last amended by Laws of Utah 2010, Chapter 286
- 29 **31A-35-202**, as last amended by Laws of Utah 2011, Chapter 284
- 30 **31A-35-301**, as last amended by Laws of Utah 2009, Chapter 183
- 31 **31A-35-401**, as last amended by Laws of Utah 2010, Chapter 10
- 32 **31A-35-401.5**, as last amended by Laws of Utah 2012, Chapter 253
- 33 **31A-35-402**, as last amended by Laws of Utah 2003, Chapter 298
- 34 **31A-35-404**, as last amended by Laws of Utah 2000, Chapter 259
- 35 **31A-35-405**, as last amended by Laws of Utah 2009, Chapter 349
- 36 **31A-35-406**, as last amended by Laws of Utah 2011, Chapter 284
- 37 **31A-35-407**, as enacted by Laws of Utah 1998, Chapter 293
- 38 **31A-35-501**, as last amended by Laws of Utah 2000, Chapter 259
- 39 **31A-35-502**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **31A-35-503**, as last amended by Laws of Utah 2003, Chapter 298
- 41 **31A-35-504**, as last amended by Laws of Utah 2010, Chapter 178
- 42 **31A-35-601**, as last amended by Laws of Utah 2003, Chapter 298
- 43 **31A-35-602**, as last amended by Laws of Utah 2011, Chapter 284
- 44 **31A-35-603**, as last amended by Laws of Utah 2003, Chapter 298
- 45 **31A-35-604**, as last amended by Laws of Utah 2003, Chapter 298
- 46 **31A-35-605**, as last amended by Laws of Utah 2003, Chapter 298
- 47 **31A-35-606**, as last amended by Laws of Utah 2003, Chapter 298
- 48 **31A-35-607**, as last amended by Laws of Utah 2012, Chapter 253
- 49 **31A-35-608**, as last amended by Laws of Utah 2003, Chapter 298
- 50 **31A-35-701**, as last amended by Laws of Utah 2004, Chapter 274
- 51 **31A-35-702**, as last amended by Laws of Utah 2003, Chapter 298
- 52 **31A-35-703**, as last amended by Laws of Utah 2003, Chapter 298
- 53 **31A-35-704**, as last amended by Laws of Utah 2003, Chapter 298
- 54 **77-18a-1**, as last amended by Laws of Utah 2009, Chapter 175
- 55 **77-20-1**, as last amended by Laws of Utah 2015, Chapter 99
- 56 **77-20-3**, as last amended by Laws of Utah 1998, Chapter 293
- 57 **77-20-4**, as last amended by Laws of Utah 2014, Chapter 170
- 58 **77-20-7**, as last amended by Laws of Utah 2011, Chapter 179

- 59 [77-20-8.5](#), as last amended by Laws of Utah 2001, Chapter 245
- 60 [77-20-9](#), as last amended by Laws of Utah 2008, Chapter 3
- 61 [77-20-10](#), as last amended by Laws of Utah 2012, Chapter 380
- 62 [77-20b-101](#), as last amended by Laws of Utah 2011, Chapter 179
- 63 [77-20b-102](#), as last amended by Laws of Utah 2000, Chapter 259
- 64 [77-20b-103](#), as last amended by Laws of Utah 2000, Chapter 259
- 65 [77-20b-104](#), as last amended by Laws of Utah 2006, Chapter 332
- 66 [77-20b-105](#), as enacted by Laws of Utah 2006, Chapter 332

67 ENACTS:

- 68 [77-20b-100](#), Utah Code Annotated 1953

69 REPEALS:

- 70 [77-20-5](#), as last amended by Laws of Utah 1998, Chapter 293



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

73 Section 1. Section [31A-35-102](#) is amended to read:

74 **[31A-35-102](#). Definitions.**

75 As used in this chapter:

76 (1) "Bail bond" means a bail bond insurance product for a specified monetary amount
77 that is:

78 (a) executed by a bail bond producer licensed in accordance with Section [31A-35-401](#);
79 and

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

83 (i) the release of a person from incarceration; and

84 (ii) the appearance of the released person at court hearings the person is required to
85 attend.

86 [~~(4)~~] (2) "Bail bond [~~surety company~~] agency" means any sole proprietor or entity
87 [~~who~~] that:

88 (a) is licensed under Subsection [31A-35-404](#)(1) or (2);

89 [~~(a)~~] (b) (i) is the agent of a surety insurer that [~~issues~~] sells a bail bond in connection

90 with judicial proceedings;

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

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

95 ~~[(b)]~~ (c) receives or is promised money or other things of value for a service described
96 in Subsection ~~[(4)(a)]~~ (2)(b).

97 ~~[(2)]~~ (3) "Bail bond producer" means an individual who:

98 (a) is appointed by:

99 (i) a surety insurer that ~~[issues]~~ sells bail bonds; or

100 (ii) a bail bond ~~[surety company]~~ agency licensed under this chapter;

101 (b) is appointed to execute or countersign undertakings of bail in connection with
102 judicial proceedings; and

103 (c) receives or is promised money or other things of value for engaging in an act
104 described in Subsection ~~[(2)]~~ (3)(b).

105 ~~[(3)]~~ "Bail bond surety" means a person that:

106 ~~[(a) (i) is a bail bond surety company licensed under this chapter; or]~~

107 ~~[(ii) a surety insurer; and]~~

108 ~~[(b) issues bonds to secure:]~~

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

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

111 ~~[(5)]~~ (4) "Bail enforcement agent" means ~~[an individual who: (a) is employed or~~
112 ~~contracted with to: (i) enforce the terms and conditions of a defendant's release on bail in a~~
113 ~~civil or criminal proceeding; (ii) apprehend a defendant or surrender a defendant to custody; or~~
114 ~~(iii) both Subsections (5)(a)(i) and (ii); and (b) receives or is promised money or other things of~~
115 ~~value for the services described in Subsection (5)(a)]~~ the same as that term is defined in Section
116 53-11-102.

117 ~~[(6)]~~ (5) "Board" means the Bail Bond ~~[Surety]~~ Oversight Board created in Section
118 31A-35-201.

119 ~~[(7)]~~ (6) "Certificate" means a certificate of authority issued under this chapter to allow
120 an insurer to operate as a surety insurer.

121 ~~[(8)]~~ (7) "Indemnitor" means an entity or natural person ~~[who]~~ that enters into an
 122 agreement with a bail bond ~~[surety]~~ agency to hold the bail bond ~~[surety]~~ agency harmless from
 123 loss incurred as a result of executing a bail bond.

124 ~~[(9)]~~ (8) "Liquid assets" means financial holdings that can be converted into cash in a
 125 timely manner without the loss of principal.

126 (9) "Premium" means the specified monetary amount used to purchase a bail bond.

127 (10) "Principal" means ~~[an individual or corporation whose performance is guaranteed~~
 128 ~~by bond.]~~ a person that:

129 (a) guarantees the performance of a bail bond; or

130 (b) owns less than 10% of the bail bond agency.

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

132 (a) is licensed under Chapter 4, Insurers in General, Chapter 5, Domestic Stock and
 133 Mutual Insurance Corporations, or Chapter 14, Foreign Insurers;

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

135 (c) ~~[issues]~~ sells bail bonds in connection with judicial proceedings.

136 (12) "Utah depository institution" ~~[is]~~ means a depository institution, as defined in
 137 Section [7-1-103](#), that:

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

139 (b) operates a branch in Utah.

140 Section 2. Section **31A-35-103** is amended to read:

141 **31A-35-103. Exemption from other provisions of this title.**

142 Bail bond ~~[surety companies]~~ agencies are exempted from:

143 (1) Chapter 3, Department Funding, Fees, and Taxes, except Section [31A-3-103](#);

144 (2) Chapter 4, Insurers in General, except Sections [31A-4-102](#), [31A-4-103](#), [31A-4-104](#),
 145 and [31A-4-107](#);

146 (3) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except Section
 147 [31A-5-103](#);

148 (4) Chapter 6a, Service Contracts;

149 (5) Chapter 6b, Guaranteed Asset Protection Waiver Act;

150 ~~[(5)]~~ (6) Chapter 7, Nonprofit Health Service Insurance Corporations;

151 ~~[(6)]~~ (7) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

- 152 (8) Chapter 8a, Health Discount Program Consumer Protection Act;
- 153 ~~[(7)]~~ (9) Chapter 9, Insurance Fraternal;
- 154 ~~[(8)]~~ (10) Chapter 10, Annuities;
- 155 ~~[(9)]~~ (11) Chapter 11, Motor Clubs;
- 156 ~~[(10)]~~ (12) Chapter 12, State Risk Management Fund;
- 157 ~~[(11)]~~ (13) Chapter 13, Employee Welfare Funds and Plans;
- 158 ~~[(12)]~~ (14) Chapter 14, Foreign Insurers;
- 159 ~~[(13)]~~ (15) Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention
- 160 Groups;
- 161 ~~[(14)]~~ (16) Chapter 16, Insurance Holding Companies;
- 162 ~~[(15)]~~ (17) Chapter 17, Determination of Financial Condition;
- 163 ~~[(16)]~~ (18) Chapter 18, Investments;
- 164 ~~[(17)]~~ (19) Chapter 19a, Utah Rate Regulation Act;
- 165 ~~[(18)]~~ (20) Chapter 20, Underwriting Restrictions;
- 166 (21) Chapter 23b, Navigator License Act;
- 167 ~~[(19)]~~ (22) Chapter 25, Third Party Administrators;
- 168 ~~[(20)]~~ (23) Chapter 26, Insurance Adjusters;
- 169 ~~[(21)]~~ (24) Chapter 27, Delinquency Administrative Action Provisions;
- 170 ~~[(22)]~~ (25) Chapter 27a, Insurer Receivership Act;
- 171 ~~[(23)]~~ (26) Chapter 28, Guaranty Associations;
- 172 ~~[(24) Chapter 29, Comprehensive Health Insurance Pool Act;]~~
- 173 ~~[(25)]~~ (27) Chapter 30, Individual, Small Employer, and Group Health Insurance Act;
- 174 ~~[(26)]~~ (28) Chapter 31, Insurance Fraud Act;
- 175 (29) Chapter 32a, Medical Care Savings Account Act;
- 176 ~~[(27)]~~ (30) Chapter 33, Workers' Compensation Fund; [and]
- 177 ~~[(28)]~~ (31) Chapter 34, Voluntary Health Insurance Purchasing Alliance Act[-];
- 178 (32) Chapter 36, Life Settlements Act;
- 179 (33) Chapter 37, Captive Insurance Companies Act;
- 180 (34) Chapter 37a, Special Purpose Financial Captive Insurance Company Act;
- 181 (35) Chapter 38, Federal Health Care Tax Credit Program Act;
- 182 (36) Chapter 39, Interstate Insurance Product Regulation Compact;

- 183 (37) Chapter 40, Professional Employer Organization Licensing Act;
 184 (38) Chapter 41, Title Insurance Recovery, Education, and Research Fund Act;
 185 (39) Chapter 42, Defined Contribution Risk Adjuster Act; and
 186 (40) Chapter 43, Small Employer Stop-Loss Insurance Act.

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

188 **31A-35-104. Rulemaking authority.**

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

191 Section 4. Section **31A-35-201** is amended to read:

192 **31A-35-201. Bail Bond Oversight Board.**

193 (1) There is created a Bail Bond [~~Surety~~] Oversight Board within the department,
 194 consisting of:

195 (a) the following seven voting members [~~to~~] who shall be appointed by the
 196 commissioner:

197 (i) one representative each from four licensed bail bond [~~surety companies~~] agencies;

198 (ii) two members of the general public who do not have any financial interest in or
 199 professional affiliation with any bail bond [~~surety company~~] agency; and

200 (iii) one attorney in good standing licensed to practice law in Utah; and

201 (b) a nonvoting member who is a staff member of the insurance department appointed
 202 by the commissioner.

203 (2) (a) The appointments are for terms of four years. A board member may not serve
 204 more than two consecutive terms.

205 (b) The [~~insurance~~] commissioner shall, at the time of appointment or reappointment of
 206 a board member described in Subsection (1)(a), adjust the length of terms to ensure that the
 207 terms of board members are staggered so approximately half of the board is appointed every
 208 two years.

209 (3) A board member serves until:

210 (a) removed by the [~~insurance~~] commissioner;

211 (b) the member's resignation; or

212 (c) for a member described in Subsection (1)(a), the expiration of the member's term
 213 and the appointment of a successor.

214 (4) When a vacancy occurs in the membership of a board member described in
215 Subsection (1)(a) for any reason, the replacement shall be appointed for the remainder of the
216 unexpired term.

217 (5) The board shall annually elect one of its members as chair.

218 (6) Four voting members constitute a quorum for the transaction of business.

219 (7) A member may not receive compensation or benefits for the member's service, but
220 may receive per diem and travel expenses in accordance with:

221 (a) Section 63A-3-106;

222 (b) Section 63A-3-107; and

223 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
224 63A-3-107.

225 (8) (a) The commissioner, with a majority vote of the board, may remove any member
226 of the board described in Subsection (1)(a) for misconduct, incompetency, or neglect of duty.

227 (b) The board shall conduct a hearing if requested by the board member described in
228 Subsection (1)(a) that is to be removed.

229 (9) Members of the board are immune from suit with respect to all acts done and
230 actions taken in good faith in carrying out the purposes of this chapter.

231 Section 5. Section 31A-35-202 is amended to read:

232 **31A-35-202. Board responsibilities.**

233 (1) The board shall:

234 (a) meet:

235 (i) at least quarterly; and

236 (ii) at the call of the chair;

237 (b) make written recommendations to the commissioner for rules governing the
238 following aspects of the bail bond [surety] insurance business:

239 (i) qualifications, applications, and fees for obtaining:

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

241 (B) a certificate;

242 (ii) limits on the aggregate amounts of bail bonds;

243 (iii) unprofessional conduct;

244 (iv) procedures for hearing and resolving allegations of unprofessional conduct; and

- 245 (v) sanctions for unprofessional conduct;
- 246 (c) screen:
- 247 (i) bail bond [~~surety company~~] agency license applications; and
- 248 (ii) persons applying for a bail bond [~~surety company~~] agency license; and
- 249 (d) recommend to the commissioner action regarding the granting, renewing,
- 250 suspending, revoking, and reinstating of bail bond surety company license.
- 251 (2) The board may:
- 252 (a) conduct investigations of allegations of unprofessional conduct on the part of
- 253 persons or bail bond [~~sureties~~] agencies involved in the business of bail bond [~~surety~~]
- 254 insurance; and
- 255 (b) provide the results of the investigations described in Subsection (2)(a) to the
- 256 commissioner with recommendations for:
- 257 (i) action; and
- 258 (ii) any appropriate sanctions.
- 259 Section 6. Section **31A-35-301** is amended to read:
- 260 **31A-35-301. The commissioner's authority.**
- 261 (1) The commissioner shall:
- 262 (a) make rules as necessary for the administration of this chapter;
- 263 (b) with information as provided by the board, issue or deny licensure under this
- 264 chapter;
- 265 (c) take action regarding a license, including suspension or revocation; and
- 266 (d) maintain and publish a current list of licensed bail bond [~~surety companies~~]
- 267 agencies and bail bond producers.
- 268 (2) The commissioner may establish fees for the issuance, renewal, and reinstatement
- 269 of a bail bond [~~surety company~~] agency license in accordance with Section [63J-1-504](#).
- 270 Section 7. Section **31A-35-401** is amended to read:
- 271 **31A-35-401. Requirement for license or certificate of authority -- Process -- Fees**
- 272 **-- Limitations.**
- 273 (1) (a) A person may not engage in the bail bond [~~surety~~] insurance business unless that
- 274 person:
- 275 (i) is a bail bond [~~surety company~~] agency licensed under this chapter;

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

279 (iii) is a bail bond producer licensed in accordance with this section.

280 (b) A bail bond [~~surety company~~] agency shall be licensed under this chapter as an
281 agency.

282 (c) A bail bond producer shall be licensed under Chapter 23a, Insurance Marketing -
283 Licensing Producers, Consultants, and Reinsurance Intermediaries, as a limited lines producer.

284 (2) A person applying for a bail bond [~~surety company~~] agency license under this
285 chapter shall submit to the commissioner:

286 (a) a completed application form as prescribed by the commissioner;

287 (b) a fee as determined by the commissioner in accordance with Section 31A-3-103;

288 and

289 (c) any additional information required by rule.

290 (3) A fee required under this section is not refundable.

291 (4) A fee collected from a bail bond [~~surety company~~] agency shall be deposited [~~in~~]
292 into a restricted account created in Section 31A-35-407.

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

294 (b) A bail bond producer shall be a resident of Utah.

295 (c) A foreign surety insurer that is granted a certificate to [~~issue~~] sell bail bonds may
296 only [~~issue~~] sell bail bonds through a bail bond [~~surety company~~] agency licensed under this
297 chapter.

298 Section 8. Section 31A-35-401.5 is amended to read:

299 **31A-35-401.5. Additional licensure requirements for a bail bond agency.**

300 (1) A person applying for licensure or the reinstatement of a license as a bail bond
301 [~~surety or~~] agency [~~for the first time~~] shall, in addition to the requirements of Section
302 31A-35-401, provide proof that at least one principal of the bail bond [~~surety or~~] agency will
303 have a minimum of 2,000 hours of experience working as an employee of a bail bond [~~surety~~
304 company] agency as a licensed bail bond [~~agent~~] producer.

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

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

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

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

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

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

317 Section 9. Section 31A-35-402 is amended to read:

318 **31A-35-402. Authority related to bail bonds.**

319 (1) A bail bond [~~surety company~~] agency may only [~~issue~~] sell bail bonds.

320 (2) In accordance with Section 31A-23a-205, a bail bond producer may not execute or
321 issue a bail bond in this state without holding a current appointment from a [~~bail bond~~] surety
322 insurer or a current designation from a bail bond [~~company~~] agency.

323 (3) A bail bond surety agency or insurer may not allow any person who is not a bail
324 bond producer to engage in the bail bond surety insurance business on the bail bond [~~surety's~~]
325 agency's or insurer's behalf, except for individuals:

326 (a) employed solely for the performance of clerical, stenographic, investigative, or
327 other administrative duties that do not require a license as:

328 (i) a bail bond [~~surety company~~] agency; or

329 (ii) a bail bond producer; and

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

332 Section 10. Section 31A-35-404 is amended to read:

333 **31A-35-404. Minimum financial requirements for bail bond agency license.**

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

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

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

344 (i) (A) a current financial statement:

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

346 (II) showing a net worth of at least \$300,000, at least \$100,000 of which is in liquid
347 assets; or

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

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

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

353 (ii) a copy of the applicant's federal income tax return for the preceding two years, but
354 only for an original application; and

355 (iii) for each parcel of real property owned by the applicant and included in net worth
356 calculations:

357 (A) a title letter or report, or a current abstract of title from the office of the county
358 recorder; and

359 (B) [~~an~~] (I) a certified appraisal [dated not more than two years prior to the date of
360 application.] made fewer than six months prior to licensure for each parcel and a title report
361 that is current as of the date of licensure, if the bail bond agency is in its first year of licensure
362 and has pledged real property owned by the applicant; or

363 (II) a certified appraisal report or a current tax notice and title letter or report, or a
364 current abstract of title from the county recorder if the bail bond agency is in its second or
365 subsequent year of licensure and has pledged real property owned by the applicant.

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

368 (3) A bail bond [~~surety company~~] agency shall maintain a qualifying power of attorney

369 issued by a surety insurer if:

370 (a) [~~if~~] the bail bond [~~surety company~~] agency is the agent of the surety insurer; and

371 (b) the surety insurer:

372 (i) [~~issues~~] sells bail bonds;

373 (ii) is in good standing in its state of domicile; and

374 (iii) is granted a certificate to write bail bonds in Utah.

375 (4) The commissioner may revoke the license of a bail bond [~~surety company~~] agency
376 that fails to maintain the minimum financial requirements required under this section.

377 (5) The commissioner may set by rule the limits on the aggregate amounts of bail
378 bonds issued by a bail bond [~~surety company~~] agency.

379 Section 11. Section **31A-35-405** is amended to read:

380 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

381 (1) Upon a determination by the board that a person applying for a bail bond [~~surety~~
382 ~~company~~] agency license meets the requirements for issuance of a license under this chapter,
383 the commissioner shall issue to that person a bail bond [~~surety company~~] agency license.

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

387 (i) stating the grounds for denial; and

388 (ii) notifying the person applying for licensure as a bail bond [~~surety company~~] agency
389 that:

390 (A) the person is entitled to a hearing if that person wants to contest the denial; and

391 (B) if the person wants a hearing, the person shall submit the request in writing to the
392 commissioner within 15 days after the issuance of the denial.

393 (b) The department shall schedule a hearing described in Subsection (2)(a) no later
394 than 60 days after the commissioner's receipt of the request.

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

396 (i) return the case to the commissioner for reconsideration;

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

398 (iii) reverse the commissioner's decision.

399 (3) A decision under this section is subject to review under Title 63G, Chapter 4,

400 Administrative Procedures Act.

401 Section 12. Section 31A-35-406 is amended to read:

402 **31A-35-406. Renewal and reinstatement.**

403 (1) (a) A license under this chapter expires [~~annually~~] on August 14. To renew its
404 license under this chapter, on or before July 15 a bail bond surety company shall:

405 (i) complete and submit a renewal application to the department; [~~and~~]

406 (ii) require that a principal of the agency attends at least one board meeting each year;

407 and

408 [~~(ii)~~] (iii) pay the department the applicable renewal fee established in accordance with
409 Section 31A-3-103.

410 (b) A bail bond [~~surety company~~] agency shall renew its license under this chapter
411 annually as established by department rule, regardless of when the license is issued.

412 (2) A bail bond [~~surety company~~] agency may apply for reinstatement of an expired
413 bail bond [~~surety company~~] agency license within one year following the expiration of the
414 license under Subsection (1) by:

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

416 (b) paying a license reinstatement fee established in accordance with Section
417 31A-3-103.

418 (3) If a bail bond [~~surety company~~] agency license has been expired for more than one
419 year, the person applying for reinstatement of the bail bond [~~surety~~] agency license shall:

420 (a) submit a new application form to the commissioner; and

421 (b) pay the application fee established in accordance with Section 31A-3-103.

422 (4) If a bail bond [~~surety company~~] agency license is suspended, the applicant may not
423 submit an application for a bail bond [~~surety company~~] agency license until after the end of the
424 period of suspension.

425 (5) A fee collected under this section shall be deposited in the restricted account
426 created in Section 31A-35-407.

427 Section 13. Section 31A-35-407 is amended to read:

428 **31A-35-407. Restricted account.**

429 (1) There is created within the General Fund a restricted account known as the "Bail
430 Bond [~~Surety~~] Administration Account."

- 431 (2) (a) The account shall be funded from the fees imposed under this chapter.
- 432 (b) The department shall deposit all fees collected under this part [m] into the account.
- 433 (c) The funds in the account shall be used by the department to administer this chapter.
- 434 (d) The account shall earn interest, which shall be deposited [m] into the account.
- 435 (3) The department shall at the end of each quarter provide to the board an itemized
- 436 accounting that includes the balances at the beginning and the end of the quarter. The
- 437 department shall provide the report no later than the 30th day of the month subsequent to the
- 438 last month of the required quarterly report.

439 Section 14. Section **31A-35-501** is amended to read:

440 **31A-35-501. Emergency action regarding a license.**

441 (1) If the commissioner determines, based on an investigation, that the public health,
442 safety, or welfare requires emergency action, the commissioner may order a summary
443 suspension of a bail bond [~~surety company~~] agency license pending proceedings for revocation
444 or other action.

445 (2) The order described in Subsection (1) shall:

446 (a) state the grounds upon which the summary suspension is issued, including the
447 charges made against the licensee; and

448 (b) advise the licensee of the right to an administrative hearing before the commissioner
449 within 60 days after the summary suspension is ordered.

450 Section 15. Section **31A-35-502** is amended to read:

451 **31A-35-502. Notification of violation of chapter.**

452 If the commissioner has reason to believe a person licensed as a bail bond [~~surety~~
453 ~~company~~] agency, surety insurer, or [~~a~~] bail bond producer has violated this chapter, written
454 notice shall be sent to that person, advising the person of:

455 (1) the alleged violation;

456 (2) the commissioner's authority to take action against the person's license;

457 (3) the person's right to an administrative hearing under Title 63G, Chapter 4,
458 Administrative Procedures Act; and

459 (4) the period of time within which the hearing described in Subsection (3) shall be
460 requested if the person requests a hearing.

461 Section 16. Section **31A-35-503** is amended to read:

462 **31A-35-503. Disciplinary action -- Hearing -- Appeal.**

463 (1) Based on information the commissioner receives during a hearing described in
464 Section [31A-35-502](#) regarding a person licensed as a bail bond [~~surety company~~] agency or bail
465 bond producer, the commissioner may:

- 466 (a) dismiss the complaint if the commissioner finds it is without merit;
- 467 (b) fix a period and terms of probation best adopted to educate the person;
- 468 (c) place the license on suspension for a period of not more than 12 months; [~~or~~]
- 469 (d) impose a forfeiture pursuant to Section [31A-2-308](#); or
- 470 [~~(e)~~] (e) revoke the license.

471 (2) The commissioner shall advise the person described in Subsection (1) in writing of:

- 472 (a) the commissioner's findings based on the hearing; and
- 473 (b) the person's rights of appeal under this chapter.

474 (3) (a) Unless the conditions of Subsection (3)(b) are met, if a bail bond [~~surety~~
475 ~~company~~] agency license is suspended or revoked under this chapter, a member, employee,
476 officer, or director of that corporation may not:

- 477 (i) be licensed as a bail bond [~~surety company~~] agency or bail bond producer; or
- 478 (ii) be designated in any license to exercise authority under this chapter during the
479 period of the suspension or revocation.

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

- 482 (i) was not personally at fault; and
- 483 (ii) did not acquiesce in the matter on account of which the license was suspended or
484 revoked.

485 Section 17. Section **31A-35-504** is amended to read:

486 **31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and**
487 **revocation of bail bond agency license.**

488 (1) As used in this section:

- 489 (a) [~~"Company"~~] "Agency" means a bail bond [~~surety company~~] agency.
- 490 (b) "Judgment" means a judgment of bail bond forfeiture issued under Section
491 [77-20b-104](#).

492 (2) (a) (i) [~~A company~~] An agency shall pay a judgment not later than 15 days

493 following service of notice upon the [~~company~~] agency from a prosecutor of the entry of the
494 judgment.

495 (ii) [~~A company~~] An agency may pay a bail bond forfeiture to the court prior to
496 judgment.

497 (b) (i) A prosecutor who does not receive proof of or notice of payment of the
498 judgment within 15 days after the service of notice to the [~~company~~] agency of a judgment
499 shall notify the commissioner of the failure to pay the judgment.

500 (ii) The commissioner shall notify the [~~company~~] agency, by the most expeditious
501 means available, of the nonpayment of the judgment.

502 (iii) The [~~company~~] agency shall satisfy the judgment within five business days after
503 receiving notice under Subsection (2)(b)(ii). If the judgment is not satisfied at the end of the
504 five days, the commissioner may suspend the [~~company's~~] agency's license under Subsection
505 (3).

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

508 (d) A prosecutor may not proceed under Subsection (2)(b) if [~~a company~~] an agency,
509 within 15 days after service of notice of the entry of judgment is served:

510 (i) files a motion to set aside the judgment or files an application for an extraordinary
511 writ; and

512 (ii) provides proof that the [~~surety~~] agency has posted the judgment amount with the
513 court in the form of cash, a cashier's check, or certified funds.

514 (e) As used in this section, the filing of the following tolls the time within which [~~a~~
515 ~~company~~] an agency is required to pay a judgment if the motion or application is filed within
516 15 days after the day on which service of notice of the entry of a judgment is served:

517 (i) a motion to set aside a judgment; or

518 (ii) an application for extraordinary writ.

519 (3) The commissioner shall suspend the license of the [~~company~~] agency not later than
520 five days following the [~~company's~~] agency's failure to satisfy the judgment as required under
521 Subsection (2)(b).

522 (4) If the prosecutor receives proof of or notice of payment of the judgment during the
523 suspension period under Subsection (3), the prosecutor shall immediately notify the

524 commissioner of the payment. The notice shall be in writing and by the most expeditious
525 means possible, including facsimile or other electronic means.

526 (5) The commissioner shall lift a suspension under Subsection (3) within five days of
527 the day on which all of the following conditions are met:

528 (a) the suspension has been in place for no fewer than 14 days;

529 (b) the commissioner has received written notice of payment of the unpaid forfeiture
530 from the prosecutor; and

531 (c) the commissioner has received:

532 (i) no other notice of any unpaid forfeiture from a prosecutor; or

533 (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that
534 the unpaid forfeiture has been paid.

535 (6) The commissioner shall commence an administrative proceeding and revoke the
536 license of ~~[a company]~~ an agency that fails to meet the conditions under Subsection (5) within
537 60 days following the initial date of suspension.

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

540 Section 18. Section ~~31A-35-601~~ is amended to read:

541 **~~31A-35-601. Acts of producer or agent.~~**

542 ~~[(1) As used in this section:]~~

543 ~~[(a) "Bail recovery agent" means an individual employed by a bail enforcement agent
544 to assist the bail enforcement agent regarding civil or criminal defendants released on bail by:]~~

545 ~~[(i) presenting a defendant for required court appearances;]~~

546 ~~[(ii) apprehending or surrendering a defendant to a court; or]~~

547 ~~[(iii) keeping the defendant under necessary surveillance.]~~

548 ~~[(b) "Bail recovery apprentice" means an individual who:]~~

549 ~~[(i) is employed by a bail enforcement agent; and]~~

550 ~~[(ii) works under the direct supervision of that bail enforcement agent or under the
551 direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless
552 the bail recovery apprentice is conducting activities at the direction of the employing bail
553 enforcement agent that do not require direct supervision.]~~

554 ~~[(2)]~~ (1) The acts or conduct of any bail bond producer ~~[or bail enforcement agent, bail~~

555 ~~recovery agent, or bail recovery apprentice]~~ who acts within the scope of the authority
 556 delegated to ~~[him]~~ the producer by the bail bond ~~[surety,]~~ agency or surety insurer are
 557 considered to be the acts or conduct of the bail bond agency or surety insurer for which the bail
 558 bond producer ~~[or bail bond enforcement agent, bail recovery agent, or bail recovery~~
 559 ~~apprentice]~~ is acting as agent.

560 (2) The acts or conduct of any bail bond agency that acts within the scope of the
 561 authority delegated to the bail bond agency by the surety insurer are considered to be the acts or
 562 conduct of the surety insurer.

563 ~~[(3) The acts or conduct of any bail bond producer or bail enforcement agent, bail~~
 564 ~~recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated~~
 565 ~~to him by the bail bond producer are considered to be the acts or conduct of the bail bond~~
 566 ~~producer for which the bail enforcement agent is acting as agent.]~~

567 (3) (a) Bail bond agencies and surety insurers are not liable for the actions of bail
 568 enforcement agents, bail recovery agents, or bail recovery apprentices.

569 (b) Bail enforcement agent, bail recovery agent, and bail recovery apprentice mean the
 570 same as those terms are defined in Section [53-11-102](#).

571 Section 19. Section **31A-35-602** is amended to read:

572 **31A-35-602. Place of business -- Records to be kept at place of business.**

573 (1) (a) A bail bond ~~[surety company]~~ agency shall have and maintain in this state a
 574 place of business:

575 (i) accessible to the public; and

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

578 (b) The address of the place of business described in Subsection (1)(a) shall appear
 579 upon:

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

581 (ii) a bail bond ~~[surety company]~~ agency license issued under this chapter.

582 (c) In addition to complying with Subsection (1)(b), a bail bond ~~[surety company]~~
 583 agency shall register and maintain with the commissioner the following at which the
 584 commissioner may contact the bail bond ~~[surety company]~~ agency:

585 (i) a telephone number; and

586 (ii) a business email address.

587 (d) A bail bond [~~surety company~~] agency shall notify the commissioner within 20 days
588 of a change in the bail bond [~~surety company's~~] agency's:

589 (i) place of business address;

590 (ii) telephone number; or

591 (iii) business email address.

592 (e) All forms required to be filed with the department pursuant to Section 31A-35-607

593 by the bail bond agency shall contain the address, telephone number, and business email

594 address as changed under Subsection (1)(d) within 20 days of the change.

595 [~~(e)~~] (f) This section does not prohibit a bail bond [~~surety company~~] agency from
596 maintaining the place of business required under this section in the licensee's residence, if the
597 residence is in Utah.

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

600 Section 20. Section 31A-35-603 is amended to read:

601 **31A-35-603. Collateral security.**

602 (1) A bail bond producer may accept collateral security in connection with a bail
603 transaction, if the collateral security is reasonable in relation to the face amount of the bail
604 bond.

605 (2) (a) The collateral security described in Subsection (1) shall be received by the bail
606 bond producer in the bail bond producer's fiduciary capacity.

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

609 (c) All cash collateral shall be recorded and deposited into the bail bond agency's trust
610 account within three business days after receipt of the cash.

611 (d) All personal property and merchandise collateral shall be recorded in the bail bond
612 agency's merchandise log within three business days after receipt of the merchandise.

613 (3) (a) Any collateral that is deposited with a bail bond producer or bail bond [~~surety~~]
614 agency shall be returned to the person who deposited it within 10 days after the return is
615 requested by the person who deposited it if:

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

617 (ii) all fees owed to the bail bond producer or bail bond [surety] agency have been paid.

618 (b) A certified copy of the minute order from the court stating the bail or undertaking
619 was ordered exonerated is prima facie evidence of exoneration or termination of liability.

620 (4) (a) If a bail bond producer accepts collateral, the bail bond producer shall give a
621 written receipt for the collateral.

622 (b) The receipt required by Subsection (4)(a) shall include a fully detailed account of
623 the collateral received.

624 (5) Upon return of collateral to the person who posted it, if any amount has been
625 deducted by the bail bond [surety] agency or bail bond producer as expense, the bail bond
626 [surety] agency or bail bond producer shall:

627 (a) include with the returned collateral an itemized statement of all expenses deducted
628 from the collateral; and

629 (b) maintain a copy of the statement required by Subsection (5)(a) in the records of the
630 bail bond [surety] agency or bail bond producer.

631 (6) If the bail bond secured by the collateral is forfeited and the bail bond producer or
632 bail bond [surety] agency retains possession of the collateral in payment of the forfeiture or
633 otherwise disposes of the collateral, the person retaining possession or disposing of the
634 property shall maintain a written record of the collateral, including any disposition.

635 (7) (a) If a document that conveys title to real property is used as collateral in a bail
636 bond transaction, the document shall state on its face that it is executed as part of a security
637 transaction.

638 (b) If the document described in Subsection (7)(a) is recorded, the bail bond producer
639 or the bail bond [surety] agency shall:

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

642 (ii) promptly deliver the reconveyance document to:

643 (A) the person executing the original conveyance; or

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

646 (8) The bail bond agency shall maintain an itemized list of all merchandise collateral,
647 which shall include:

- 648 (a) the date of the bail bond;
- 649 (b) the full name of the defendant;
- 650 (c) the full name of each cosigner;
- 651 (d) a detailed description of the collateral;
- 652 (e) the amount of bail;
- 653 (f) the approximate value of the merchandise; and
- 654 (g) the final disposition of the merchandise.

655 Section 21. Section **31A-35-604** is amended to read:

656 **31A-35-604. Records.**

657 (1) A bail bond producer shall maintain at the bail bond producer's place of business:

658 (a) records of all bail bonds the bail bond producer executes or countersigns, so the
659 public may obtain all necessary information concerning those bail bonds for ~~[at least one]~~ not
660 less than the current calendar year plus the three prior years after the liability of the bail bond
661 agency or surety insurer has been terminated; and

662 (b) any additional information the commissioner may reasonably require by rule.

663 (2) Records required to be maintained under Subsection (1) shall be available for
664 examination by the commissioner or the commissioner's representatives during regular
665 business hours.

666 (3) The bail bond ~~[surety company]~~ agency shall maintain for not less than the current
667 calendar year and the three years after receipt all records of any bail bond executed or
668 countersigned by a bail bond producer appointed by the bail bond ~~[surety company]~~ agency.

669 Section 22. Section **31A-35-605** is amended to read:

670 **31A-35-605. Guarantors -- Agreement and enforcement.**

671 (1) All agreements of persons to act as guarantor for a bail bond shall be in writing or
672 reduced to writing as soon as possible after completion.

673 (2) When a person executes an agreement to act as a guarantor, the bail bond ~~[surety~~
674 ~~company]~~ agency or the bail bond producer shall deliver to that person a copy of the agreement
675 promptly upon that person's execution of the agreement.

676 (3) A bail bond producer may not enforce any guarantor agreement without disclosing
677 to the guarantor all collateral held by the bail bond producer indemnifying the bail bond to
678 which the agreement relates, and the identity of each other guarantor.

679 Section 23. Section 31A-35-606 is amended to read:

680 **31A-35-606. Bail agreement prior to commission of offense prohibited.**

681 A bail bond [~~surety~~] agency or bail bond producer may not enter into an agreement or
682 arrangement with any person, guaranteeing or assuring in advance of the commission of any
683 offense that bail will be furnished to that person or any other party if arrested.

684 Section 24. Section 31A-35-607 is amended to read:

685 **31A-35-607. Filing of forms -- Commissioner maintains files.**

686 (1) (a) In accordance with Section 31A-21-201, [~~only~~] a bail bond [~~surety company~~]
687 agency that meets the financial capacity requirements through the use of a letter of credit,
688 personal property, [~~or~~] real property, or a surety insurer shall file with the commissioner a copy
689 of each form the bail bond [~~surety company~~] agency or surety insurer uses in the bail bond
690 [~~surety~~] insurance business.

691 (b) A surety insurer filing shall comply with the following:

692 (i) a form shall be identified by a unique form number;

693 (ii) the surety insurer shall file a form on behalf of each bail bond [~~surety company~~]
694 agency appointed to write on behalf of the surety insurer;

695 (iii) once a filing is filed with the commissioner, it is the responsibility of the surety
696 insurer to verify that the bail bond [~~surety company~~] agency and its producers are using the
697 correct form;

698 (iv) a bail bond [~~surety company~~] agency and its producers are prohibited from using a
699 form that has not been filed by the surety insurer; and

700 (v) a bail bond [~~surety company~~] agency and its producers are prohibited from making
701 changes to a form that is filed by the surety insurer.

702 (c) A bail bond [~~surety company~~] agency filing, for a bail bond [~~surety company~~]
703 agency that meets the financial capacity requirements through the use of a letter of credit,
704 personal property, or real estate, shall comply with the following:

705 (i) a form shall be identified by a unique form number;

706 (ii) once a filing is filed with the commissioner, it is the responsibility of the bail bond
707 [~~surety company~~] agency to verify that its bail bond producers are using the correct form;

708 (iii) a bail bond producer is prohibited from using a form that has not been filed by the
709 bail bond [~~surety company~~] agency; and

710 (iv) a bail bond producer is prohibited from making changes to a form that is filed by
711 the bail bond [~~surety company~~] agency.

712 (2) A form described in Subsection (1) shall be filed 30 days before the form:

713 (a) is first used by the bail bond [~~surety company~~] agency or surety insurer; and

714 (b) is changed after it is filed under Subsection (2)(a).

715 (3) (a) The commissioner shall maintain and make available for public inspection a file
716 regarding each bail bond [~~surety company~~] agency and each surety insurer.

717 (b) A bail bond [~~surety company~~] agency and surety insurer shall maintain a form
718 required to be filed under this section in the office of the bail bond [~~surety company~~] agency or
719 surety insurer.

720 Section 25. Section **31A-35-608** is amended to read:

721 **31A-35-608. Premiums and authorized charges.**

722 (1) A bail bond [~~surety~~] agency or bail bond producer may not, in any bail transaction
723 or in connection with that transaction, directly or indirectly, charge or collect money or other
724 valuable consideration from any person except to:

725 (a) pay the premium on the bail at the rates established by the bail bond agency or
726 surety insurer;

727 (b) provide collateral;

728 (c) reimburse [~~himself~~] the agency or producer for actual expenses, as described in
729 Subsection (2), incurred in connection with the bail bond transaction; or

730 (d) [~~to~~] reimburse [~~himself~~] the agency or producer, or to establish a right of action
731 against the principal or any indemnitor, for actual expenses the bail bond [~~surety~~] agency or
732 bail bond producer incurred:

733 (i) in good faith; and

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

736 (2) (a) A bail bond [~~surety~~] agency or surety insurer may bring an action in a court of
737 law to enforce its equitable rights against the principal and the principal's indemnitors in
738 exoneration if:

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

740 (ii) there is only an incomplete writing.

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

742 (i) the principal sum of the bail bond or undertaking; and

743 (ii) any reasonable expenses that:

744 (A) are verified by receipt;

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

747 (C) are incurred in good faith by the bail bond [surety] agency, its bail bond producers,
748 and the agency's employees by reason of the principal's breach.

749 (3) This section does not affect or impede the right of a bail bond producer to execute
750 undertaking of bail on behalf of a nonresident producer of the bail bond agency or surety
751 insurer the bail bond producer represents.

752 (4) A bail bond agency or surety insurer shall maintain complete records of all current
753 and closed accounts receivable regarding financed premiums for the current calendar year and
754 the three prior years.

755 (5) If the bail amount on the original charge is increased by the court, the bail premium
756 paid on the original bond may be applied to the bail premium due on the increased bail amount
757 for that charge.

758 Section 26. Section **31A-35-701** is amended to read:

759 **31A-35-701. Prohibited acts.**

760 (1) A bail bond producer or bail bond [surety] agency may not:

761 (a) solicit business in or about:

762 (i) any place where persons in the custody of the state or any local law enforcement or
763 correctional agency are confined; or

764 (ii) any court;

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

768 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail
769 bond matter, except payment for legal services actually rendered for the bail bond producer or
770 bail bond [surety] agency;

771 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone

772 in the principal's behalf; or

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

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

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

778 (b) a peace officer;

779 (c) a judge; and

780 (d) ~~[a trusty or prisoner]~~ an inmate incarcerated in any jail, correctional facility, or
781 other facility used for the incarceration of persons.

782 (3) A bail bond producer may not:

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

784 (b) give the power of attorney to, or otherwise authorize anyone to, countersign in the
785 bail bond producer's name to a bail bond~~[-];~~ or

786 (c) submit a bail bond to a jail or court in Utah without having completed a written
787 agreement that:

788 (i) states the terms of the bail agreement, contract, or undertaking;

789 (ii) is signed by the bail bond producer; and

790 (iii) is filed with the department.

791 (4) A bail bond producer may not advertise or hold himself or herself out to be a bail
792 bond agency or surety insurer.

793 (5) The following persons or members of their immediate families may not solicit
794 business on behalf of a bail bond ~~[surety]~~ agency or bail bond producer:

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

797 (b) a peace officer;

798 (c) a judge; ~~[and]~~ or

799 (d) ~~[a trusty or prisoner]~~ an inmate incarcerated in any jail, correctional facility, or
800 other facility used for the incarceration of persons.

801 Section 27. Section **31A-35-702** is amended to read:

802 **31A-35-702. Early surrender without cause.**

803 (1) The bail or bail bond premium shall be returned in full if a bail bond producer
804 without good cause surrenders a defendant to custody before:

805 (a) the time specified in the undertaking of bail or the bail bond for the appearance of
806 the defendant; or

807 (b) any other occasion where the presence of the defendant in court is lawfully
808 required.

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

810 (a) the defendant providing materially false information on the application for bail or a
811 bail bond;

812 (b) the court's increasing the amount of bail beyond sound underwriting criteria
813 employed by:

814 (i) the bail bond producer; or

815 (ii) the bail bond [surety] agency;

816 (c) a material and detrimental change in the collateral posted by:

817 (i) the defendant; or

818 (ii) a person acting on the defendant's behalf;

819 (d) the defendant changing the defendant's address or telephone number without giving
820 reasonable notice to:

821 (i) the bail bond producer; or

822 (ii) the bail bond [surety] agency;

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

825 (f) failure by the defendant to appear in court at the appointed time; or

826 (g) a finding of guilt against the defendant by a court of competent jurisdiction.

827 Section 28. Section **31A-35-703** is amended to read:

828 **31A-35-703. Disciplinary action.**

829 (1) A person found to be in violation of the statutes or rules governing the conduct of
830 bail bond producers and bail bond [sureties] agencies under this chapter is subject to:

831 (a) disciplinary action by the commissioner against that person's:

832 (i) license, if the person is a bail bond [surety company] agency or bail bond producer;

833 or

834 (ii) certificate, if the person is a surety insurer; and
835 (b) imposition of civil penalties, as authorized under Title 31A, Chapter 2,
836 Administration of the Insurance Laws.

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

839 Section 29. Section 31A-35-704 is amended to read:

840 **31A-35-704. Submission of bail bond agencies and producers to jurisdiction of**
841 **court.**

842 By applying for and receiving a license or certificate to engage in the bail bond [surety]
843 insurance business in accordance with this chapter, a bail bond surety or bail bond producer:

- 844 (1) submits to the jurisdiction of the court;
- 845 (2) irrevocably appoints the clerk of the court as agent upon whom any papers affecting
846 the bail bond [surety's] agency's or bail bond producer's liability on the undertaking may be
847 served; and
- 848 (3) acknowledges that liability may be enforced on motion and upon notice as the court
849 may require, without the necessity of an independent action.

850 Section 30. Section 77-18a-1 is amended to read:

851 **77-18a-1. Appeals -- When proper.**

- 852 (1) A defendant may, as a matter of right, appeal from:
 - 853 (a) a final judgment of conviction, whether by verdict or plea;
 - 854 (b) an order made after judgment that affects the substantial rights of the defendant;
 - 855 (c) an order adjudicating the defendant's competency to proceed further in a pending
856 prosecution; or
 - 857 (d) an order denying bail, as provided in Subsection 77-20-1[(7)](8).
- 858 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek
859 discretionary appellate review of any interlocutory order.
- 860 (3) The prosecution may, as a matter of right, appeal from:
 - 861 (a) a final judgment of dismissal, including a dismissal of a felony information
862 following a refusal to bind the defendant over for trial;
 - 863 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
864 evidence has substantially impaired the prosecution's case;

- 865 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 866 (d) an order arresting judgment or granting a motion for merger;
- 867 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 868 denial of a speedy trial;
- 869 (f) an order granting a new trial;
- 870 (g) an order holding a statute or any part of it invalid;
- 871 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 872 prosecution;
- 873 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 874 Execution, that an inmate sentenced to death is incompetent to be executed;
- 875 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#); or
- 876 (k) an illegal sentence.

877 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek

878 discretionary appellate review of any interlocutory order entered before jeopardy attaches.

879 Section 31. Section **77-20-1** is amended to read:

880 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

881 (1) As used in this chapter:

882 (a) "Bail bond agency" means the same as that term is defined in Section [31A-35-102](#).

883 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

884 (c) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).

885 [(+)] (2) A person charged with or arrested for a criminal offense shall be admitted to

886 bail as a matter of right, except if the person is charged with a:

887 (a) capital felony, when the court finds there is substantial evidence to support the

888 charge;

889 (b) felony committed while on probation or parole, or while free on bail awaiting trial

890 on a previous felony charge, when the court finds there is substantial evidence to support the

891 current felony charge;

892 (c) felony when there is substantial evidence to support the charge and the court finds

893 by clear and convincing evidence that the person would constitute a substantial danger to any

894 other person or to the community, or is likely to flee the jurisdiction of the court, if released on

895 bail; or

896 (d) felony when the court finds there is substantial evidence to support the charge and
897 it finds by clear and convincing evidence that the person violated a material condition of
898 release while previously on bail.

899 ~~[(2)]~~ (3) Any person who may be admitted to bail may be released either on the
900 person's own recognizance or upon posting bail, on condition that the person appear in court
901 for future court proceedings in the case, and on any other conditions imposed in the discretion
902 of the magistrate or court that will reasonably:

- 903 (a) ensure the appearance of the accused;
- 904 (b) ensure the integrity of the court process;
- 905 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
906 appropriate; and
- 907 (d) ensure the safety of the public.

908 ~~[(3)]~~ (4) (a) Except as otherwise provided, the initial order denying or fixing the
909 amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

910 (b) A magistrate may set bail upon determining that there was probable cause for a
911 warrantless arrest.

912 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
913 Sections [10-3-920](#) and [17-32-1](#).

914 (d) A person arrested for a violation of a jail release agreement or jail release order
915 issued pursuant to Section [77-36-2.5](#):

- 916 (i) may not be released before the accused's first judicial appearance; and
- 917 (ii) may be denied bail by the court under Subsection [77-36-2.5](#)(8) or (12).

918 ~~[(4)]~~ (5) The magistrate or court may rely upon information contained in:

- 919 (a) the indictment or information;
- 920 (b) any sworn probable cause statement;
- 921 (c) information provided by any pretrial services agency; or
- 922 (d) any other reliable record or source.

923 ~~[(5)]~~ (6) (a) A motion to modify the initial order may be made by a party at any time
924 upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing
925 and to permit any victim to be notified and be present.

926 (b) Hearing on a motion to modify may be held in conjunction with a preliminary

927 hearing or any other pretrial hearing.

928 (c) The magistrate or court may rely on information as provided in Subsection ~~[(4)]~~ (5)
929 and may base its ruling on evidence provided at the hearing so long as each party is provided
930 an opportunity to present additional evidence or information relevant to bail.

931 ~~[(6)]~~ (7) Subsequent motions to modify bail orders may be made only upon a showing
932 that there has been a material change in circumstances.

933 ~~[(7)]~~ (8) An appeal may be taken from an order of any court denying bail to the
934 Supreme Court, which shall review the determination under Subsection ~~[(1)]~~ (2).

935 ~~[(8)]~~ (9) For purposes of this section, any arrest or charge for a violation of Section
936 76-5-202, Aggravated murder, is a capital felony unless:

- 937 (a) the prosecutor files a notice of intent to not seek the death penalty; or
938 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
939 has not filed a notice to seek the death penalty.

940 Section 32. Section 77-20-3 is amended to read:

941 **77-20-3. Release on own recognizance -- Changing amount of bail or conditions**
942 **of release.**

943 (1) Any person who may be admitted to bail may likewise be released on ~~[his]~~ the
944 person's own recognizance in the discretion of the magistrate or court.

945 (2) After releasing the defendant on ~~[his]~~ the defendant's own recognizance or
946 admitting the defendant to bail, the magistrate or court may:

- 947 (a) impose bail or increase or decrease the amount of the bail; and
948 (b) impose or change the conditions of release under Subsection 77-20-1~~[(2)]~~(3).

949 Section 33. Section 77-20-4 is amended to read:

950 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
951 **undertaking.**

952 (1) Bail may be posted:

- 953 (a) in cash;
954 (b) by written undertaking with or without ~~[sureties]~~ a bail bond at the discretion of the
955 magistrate; or
956 (c) by credit or debit card, at the discretion of the judge or bail commissioner.

957 (2) Bail may not be accepted without receiving in writing at the time the bail is posted

958 the current mailing address [~~and~~], telephone number, and email address of the [surety]
959 individual posting bail.

960 (3) Bail posted by debit or credit card, less the fee charged by the financial institution,
961 shall be tendered to the courts.

962 (4) Bail refunded by the court may be refunded by credit to the debit or credit card, or
963 cash. The amount refunded shall be the full amount received by the court under Subsection
964 (3), which may be less than the full amount of the bail set by the court.

965 (5) Before refunding bail that is posted by the defendant in cash, by credit card, or by
966 debit card, the court may apply the amount posted toward accounts receivable, as defined in
967 Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section
968 77-38a-404.

969 Section 34. Section 77-20-7 is amended to read:

970 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
971 **if charges not filed.**

972 (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on the
973 written undertaking are liable on the undertaking during all proceedings and for all court
974 appearances required of the defendant up to and including the surrender of the defendant for
975 sentencing, irrespective of any contrary provision in the undertaking. Any failure of the
976 defendant to appear when required is a breach of the conditions of the undertaking or bail and
977 subjects it to forfeiture, regardless of whether or not notice of appearance was given to the
978 sureties. Upon sentencing the bail bond shall be exonerated without motion.

979 (b) If the sentence includes a commitment to a jail or prison, the bail bond shall be
980 exonerated when the defendant appears at the appropriate jail or prison, unless the judge
981 [~~doesn't~~] does not require the defendant to begin the commitment within seven days, in which
982 case the bail bond is exonerated upon sentencing.

983 (c) For purposes of this section, an order of the court accepting a plea in abeyance
984 agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in
985 Abeyance, is considered to be the same as a sentencing upon a guilty plea.

986 (d) Any suspended or deferred sentencing is not the responsibility of the surety and the
987 bond is exonerated without any motion, upon acceptance of the court and the defendant of a
988 plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred

989 sentencing reviews or any other deferred sentencing agreement.

990 (e) If a surety issues a bail bond after the sentencing, the surety is liable on the
991 undertaking during all proceedings and for all court appearances required of the defendant up
992 to and including the defendant's appearance to commence serving the sentence imposed under
993 Subsection (1).

994 (2) If no information or indictment charging a person with an offense is filed in court
995 within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a
996 person from conditions of release at the person's request, and the bail bond or undertaking is
997 exonerated without further order of the court unless the prosecutor requests an extension of
998 time before the end of the 120-day period by:

999 (a) filing a notice for extension with the court; and

1000 (b) serving the notice for extension upon the sureties and the person or his attorney.

1001 (3) A court may extend bail and conditions of release for good cause.

1002 (4) Subsection (2) does not prohibit the filing of charges against a person at any time.

1003 (5) If the court does not set on a calendar any hearings on a case within 18 months of
1004 the last court docket activity on a case, the undertaking of bail is exonerated without motion.

1005 Section 35. Section 77-20-8.5 is amended to read:

1006 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

1007 (1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the
1008 defendant and obtain exoneration of bail, by notifying the clerk of the court in which the bail
1009 was posted of the defendant's surrender and requesting exoneration. Notification shall be made
1010 immediately following the surrender by surface mail, electronic mail, or fax.

1011 (b) To effect surrender, a certified copy of the surety's undertaking from the court in
1012 which it was posted or a copy of the bail agreement with the defendant shall be delivered to the
1013 on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as upon a
1014 commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking
1015 or bail agreement. The certified copy of the undertaking or copy of the bail agreement upon
1016 which the acknowledgment of surrender is endorsed shall be filed with the court. The court
1017 may then, upon proper application, order the undertaking exonerated and may order a refund of
1018 any paid premium, or part of a premium, as it finds just.

1019 (2) For the purpose of surrendering the defendant, the sureties may:

1020 (a) arrest the defendant:
1021 (i) at any time before the defendant is finally exonerated; and
1022 (ii) at any place within the state; and
1023 (b) surrender the defendant to any county jail booking facility in Utah.
1024 (3) An arrest under this section is not a basis for exonerated of the bail bond under
1025 Section 77-20b-101.

1026 (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond
1027 Recovery Act.

1028 Section 36. Section 77-20-9 is amended to read:

1029 **77-20-9. Disposition of forfeitures.**

1030 If by reason of the neglect of the defendant to appear, money deposited instead of bail
1031 or money paid by sureties on [surety] bail bond is forfeited and the forfeiture is not discharged
1032 or remitted, the clerk with whom it is deposited or paid shall, immediately after final
1033 adjournment of the court, pay over the money forfeited as follows:

1034 (1) the forfeited bail cases in or appealed from district courts shall be distributed as
1035 provided in Section 78A-5-110;

1036 (2) the forfeited bail in cases in precinct justice courts or in municipal justice courts
1037 shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;

1038 (3) the forfeited bail in cases in justice courts where the offense is not triable in that
1039 court shall be paid into the General Fund; and

1040 (4) the forfeited bail in cases not provided for in this section shall be paid 50% to the
1041 state treasurer and the remaining 50% to the county treasurer in the county in which the
1042 violation occurred or the forfeited bail is collected.

1043 Section 37. Section 77-20-10 is amended to read:

1044 **77-20-10. Grounds for detaining defendant while appealing the defendant's**
1045 **conviction -- Conditions for release while on appeal.**

1046 (1) The court shall order that a defendant who has been found guilty of an offense in a
1047 court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an
1048 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

1049 (a) the appeal raises a substantial question of law or fact likely to result in:

1050 (i) reversal;

- 1051 (ii) an order for a new trial; or
1052 (iii) a sentence that does not include a term of imprisonment in jail or prison;
1053 (b) the appeal is not for the purpose of delay; and
1054 (c) by clear and convincing evidence presented by the defendant that the defendant is
1055 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,
1056 psychological, or financial and economic safety or well-being of any other person or the
1057 community if released.
- 1058 (2) If the court makes a finding under Subsection (1) that justifies not detaining the
1059 defendant, the court shall order the release of the defendant, subject to conditions that result in
1060 the least restrictive condition or combination of conditions that the court determines will
1061 reasonably assure the appearance of the person as required and the safety of any other person
1062 and the community. The conditions may include that the defendant:
- 1063 (a) post appropriate bail;
1064 (b) execute a bail bond with a [~~bail bond~~] surety under Title 31A, Chapter 35, Bail
1065 Bond Act, in an amount necessary to assure the appearance of the defendant as required;
1066 (c) (i) execute a written agreement to forfeit, upon failing to appear as required,
1067 designated property, including money, as is reasonably necessary to assure the appearance of
1068 the defendant; and
1069 (ii) post with the court indicia of ownership of the property or a percentage of the
1070 money as the court may specify;
1071 (d) not commit a federal, state, or local crime during the period of release;
1072 (e) remain in the custody of a designated person who agrees to assume supervision of
1073 the defendant and who agrees to report any violation of a release condition to the court, if the
1074 designated person is reasonably able to assure the court that the defendant will appear as
1075 required and will not pose a danger to the safety of any other person or the community;
1076 (f) maintain employment, or if unemployed, actively seek employment;
1077 (g) maintain or commence an educational program;
1078 (h) abide by specified restrictions on personal associations, place of abode, or travel;
1079 (i) avoid all contact with the victims of the offense and with any witnesses who
1080 testified against the defendant or potential witnesses who may testify concerning the offense if
1081 the appeal results in a reversal or an order for a new trial;

- 1082 (j) report on a regular basis to a designated law enforcement agency, pretrial services
- 1083 agency, or other designated agency;
- 1084 (k) comply with a specified curfew;
- 1085 (l) not possess a firearm, destructive device, or other dangerous weapon;
- 1086 (m) not use alcohol, or any narcotic drug or other controlled substances except as
- 1087 prescribed by a licensed medical practitioner;
- 1088 (n) undergo available medical, psychological, or psychiatric treatment, including
- 1089 treatment for drug or alcohol dependency, and remain under the supervision of or in a specified
- 1090 institution if required for that purpose;
- 1091 (o) return to custody for specified hours following release for employment, schooling,
- 1092 or other limited purposes;
- 1093 (p) satisfy any other condition that is reasonably necessary to assure the appearance of
- 1094 the defendant as required and to assure the safety of any other person and the community; and
- 1095 (q) if convicted of committing a sexual offense or an assault or other offense involving
- 1096 violence against a child 17 years of age or younger, is limited or denied access to any location
- 1097 or occupation where children are, including but not limited to:
 - 1098 (i) any residence where children are on the premises;
 - 1099 (ii) activities, including organized activities, in which children are involved; and
 - 1100 (iii) locations where children congregate, or where a reasonable person should know
 - 1101 that children congregate.
- 1102 (3) The court may, in its discretion, amend an order granting release to impose
- 1103 additional or different conditions of release.
- 1104 (4) If defendant has been found guilty of an offense in a court not of record and files a
- 1105 timely notice of appeal pursuant to Subsection [78A-7-118\(1\)](#) for a trial de novo, the court shall
- 1106 stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance
- 1107 of the evidence that the defendant poses a danger to another person or the community.
- 1108 (5) If a stay is ordered, the court may order post-conviction restrictions on the
- 1109 defendant's conduct as appropriate, including:
 - 1110 (a) continuation of any pre-trial restrictions or orders;
 - 1111 (b) sentencing protective orders under Section [77-36-5.1](#);
 - 1112 (c) drug and alcohol use;

1113 (d) use of an ignition interlock; and

1114 (e) posting appropriate bail.

1115 (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense
1116 under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

1117 (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by
1118 the district court.

1119 Section 38. Section **77-20b-100** is enacted to read:

1120 **77-20b-100. Definitions.**

1121 As used in this chapter:

1122 (1) "Bail bond agency" means the same as that term is defined in Section [31A-35-102](#).

1123 (2) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

1124 (3) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).

1125 Section 39. Section **77-20b-101** is amended to read:

1126 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
1127 **failure of timely notice.**

1128 (1) If a defendant who has posted bail fails to appear before the appropriate court as
1129 required, the court shall within 30 days of the failure to appear issue a bench warrant that
1130 includes the original case number. The court shall also direct that the surety be given notice of
1131 the nonappearance. The clerk of the court shall:

1132 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
1133 days to the address of the surety;

1134 (b) notify the surety as listed on the bail bond of the name, address, and telephone
1135 number of the prosecutor;

1136 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at
1137 the same time notice is sent under Subsection (1)(a); ~~[and]~~

1138 (d) ensure that the name, address, and telephone number of the surety or its agent as
1139 listed on the bail bond is stated on the bench warrant[-]; and

1140 (e) mail notice of the failure to appear to the bail ~~[agent if the surety is different than~~
1141 ~~the producer's agent]~~ bond agency and the surety insurer.

1142 (2) The prosecutor may mail notice of nonappearance by certified mail, return receipt
1143 requested, to the address of the surety as listed on the bail bond within 37 days after the date of

1144 the defendant's failure to appear.

1145 (3) If notice of nonappearance is not mailed to a surety as listed on the bail bond, other
1146 than the defendant, in accordance with Subsection (1) or (2), the surety and its [~~agent~~] bail
1147 bond producer are relieved of further obligation under the bail bond if the surety's current name
1148 and address or the current name and address of the surety's agent are on the bail bond in the
1149 court's file.

1150 (4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled
1151 court appearance, the court may reinstate the bail bond without further notice to the [~~bond~~
1152 ~~company~~] surety.

1153 (ii) If the defendant, while in custody, appears on the case for which the bail bond was
1154 posted, the court may not reinstate the bail bond without the consent of the bond company.

1155 (b) If a defendant fails to appear within seven days after a scheduled court appearance,
1156 the court may not reinstate the bail bond without the consent of the surety.

1157 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
1158 to a warrant for failure to appear on the original charges and the court is notified of the arrest,
1159 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
1160 judgment of forfeiture, the court shall exonerate the bail bond.

1161 (d) Unless the court makes a finding of good cause why the bond should not be
1162 exonerated, it shall exonerate the bail bond if:

1163 (i) the surety has delivered the defendant to the county jail booking facility in the
1164 county where the original charge [~~is~~] or charges are pending;

1165 (ii) the defendant has been released on a bond secured from a subsequent surety for the
1166 original charge and the failure to appear;

1167 (iii) after an arrest, the defendant has escaped from jail or has been released on the
1168 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
1169 capacity, or by a sheriff's release under Section [17-22-5.5](#);

1170 (iv) the surety has transported or agreed to pay for the transportation of the defendant
1171 from a location outside of the county back to the county where the original charge is pending,
1172 and the payment is in an amount equal to government transportation expenses listed in Section
1173 [76-3-201](#); or

1174 (v) the surety demonstrates by a preponderance of the evidence that:

1175 (A) at the time the surety issued the bail bond, it had made reasonable efforts to
1176 determine that the defendant was legally present in the United States;

1177 (B) a reasonable person would have concluded, based on the surety's determination,
1178 that the defendant was legally present in the United States; and

1179 (C) the surety has failed to bring the defendant before the court because the defendant
1180 is in federal custody or has been deported.

1181 (e) Under circumstances not otherwise provided for in this section, the court may
1182 exonerate the bail bond if it finds that the prosecutor has been given reasonable notice of a
1183 surety's motion and there is good cause for the bail bond to be exonerated.

1184 (f) If a surety's bail bond has been exonerated under this section and the surety remains
1185 liable for the cost of transportation of the defendant, the surety may take custody of the
1186 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
1187 pending.

1188 Section 40. Section **77-20b-102** is amended to read:

1189 **77-20b-102. Time for bringing defendant to court.**

1190 (1) If notice of nonappearance has been mailed to a surety under Section **77-20b-101**,
1191 the surety may bring the defendant before the court or surrender the defendant into the custody
1192 of a county sheriff within the state within six months of the date of nonappearance, during
1193 which time a forfeiture action on the bail bond may not be brought.

1194 (2) A surety may request an extension of the six-month time period in Subsection (1),
1195 if the surety within that time:

1196 (a) files a motion for extension with the court; and

1197 (b) mails the motion for extension and a notice of hearing on the motion to the
1198 prosecutor.

1199 (3) The court may extend the six-month time in Subsection (1) for not more than 60
1200 days, if the surety has complied with Subsection (2) and the court finds good cause.

1201 Section 41. Section **77-20b-103** is amended to read:

1202 **77-20b-103. Defendant in custody -- Notice to prosecutor.**

1203 (1) If a surety is unable to bring a defendant to the court because the defendant is and
1204 will be in the custody of authorities of another jurisdiction, the surety shall notify the court and
1205 the prosecutor and provide the name, address, and telephone number of the custodial authority.

1206 (2) If the defendant is subject to extradition or other means by which the state can
1207 return the defendant to the court's custody, and the surety gives notice under Subsection (1), the
1208 surety's bail bond shall be exonerated:

1209 (a) if the prosecutor elects in writing not to extradite the defendant immediately; and

1210 (b) if the prosecutor elects in writing to extradite the defendant, to the extent the bail
1211 bond exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to
1212 the court's custody, upon the occurrence of the earlier of:

1213 (i) the prosecuting attorney's lodging a detainer on the defendant; or

1214 (ii) 60 days after the surety gives notice to the prosecutor under Subsection (1), if the
1215 defendant remains in custody of the same authority during that 60-day period.

1216 Section 42. Section ~~77-20b-104~~ is amended to read:

1217 **77-20b-104. Forfeiture of bail.**

1218 (1) If a surety fails to bring the defendant before the court within the time provided in
1219 Section ~~77-20b-102~~, the prosecuting attorney may request the forfeiture of the bail by:

1220 (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the
1221 surety of the defendant's nonappearance; and

1222 (b) mailing a copy of the motion to the surety.

1223 (2) A court shall enter judgment of bail forfeiture without further notice if it finds by a
1224 preponderance of the evidence:

1225 (a) the defendant failed to appear as required;

1226 (b) the surety was given notice of the defendant's nonappearance in accordance with
1227 Section ~~77-20b-101~~;

1228 (c) the surety failed to bring the defendant to the court within the six-month period
1229 under Section ~~77-20b-102~~; and

1230 (d) the prosecutor has complied with the notice requirements under Subsection (1).

1231 (3) If the surety shows by a preponderance of the evidence that it has failed to bring the
1232 defendant before the court because the defendant is deceased through no act of the surety, the
1233 court may not enter judgment of bail forfeiture and the bail bond is exonerated.

1234 (4) The amount of bail forfeited is the face amount of the bail bond, but if the
1235 defendant is in the custody of another jurisdiction and the state extradites or intends to extradite
1236 the defendant, the court may reduce the amount forfeited to the actual or estimated costs of

1237 returning the defendant to the court's jurisdiction. A judgment under Subsection (5) shall:

1238 (a) identify the surety against whom judgment is granted;

1239 (b) specify the amount of bail forfeited;

1240 (c) grant the forfeiture of the bail; and

1241 (d) be docketed by the clerk of the court in the civil judgment docket.

1242 (5) A prosecutor may immediately commence collection proceedings to execute a
1243 judgment of bail bond forfeiture against the assets of the surety.

1244 Section 43. Section **77-20b-105** is amended to read:

1245 **77-20b-105. Revocation of bail bond.**

1246 The surety is entitled to obtain the exoneration of its bail bond prior to judgment by
1247 providing written proof to the court and the prosecutor that:

1248 (1) the defendant has been booked for failure to appear regarding the charge for which
1249 the bail bond was issued; or

1250 (2) the defendant is in custody and the surety has served the defendant's bail bond
1251 revocation on the custodial authority.

1252 Section 44. **Repealer.**

1253 This bill repeals:

1254 Section **77-20-5, Qualifications of sureties -- Justification -- Requirements of**
1255 **undertaking.**

Legislative Review Note
Office of Legislative Research and General Counsel