

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;
- ▶ 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 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

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

ENACTS:

31A-35-401.5, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

(4) An individual who is applying for licensure under this chapter for the first time shall have completed a training program of not less than four hours that is approved by the commissioner and includes:

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

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

58 (c) the rights of an accused person; and

59 (d) the ethical requirements of a bail bond business.

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

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

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

66 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
67 **if charges not filed.**

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

76 (b) If the sentence includes a commitment to a jail or prison, the bond shall be
77 exonerated when the defendant appears at the appropriate jail or prison, unless the judge
78 doesn't require the defendant to begin the commitment within seven days, in which case the
79 bond is exonerated upon sentencing.

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

83 ~~[(c)]~~ (d) Any suspended or deferred sentencing is not the responsibility of the surety
84 and the bond is exonerated without any motion, upon acceptance of the court and the defendant
85 of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred

86 sentencing reviews or any other deferred sentencing agreement.

87 ~~[(d)]~~ (e) If a surety issues a bond after the ~~[execution of sentence]~~ sentencing, the
88 surety is liable on the undertaking during all proceedings and for all court appearances required
89 of the defendant up to and including ~~[the next execution of]~~ the defendant's appearance to
90 commence serving the sentence imposed under Subsection ~~[77-20-7]~~(1).

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

- 96 (a) filing a notice for extension with the court; and
- 97 (b) serving the notice for extension upon the sureties and the person or his attorney.
- 98 (3) A court may extend bail and conditions of release for good cause.
- 99 (4) Subsection (2) does not prohibit the filing of charges against a person at any time.

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

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

103 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
104 **failure of timely notice.**

105 (1) If a defendant who has posted bail fails to appear before the appropriate court
106 ~~[when]~~ as required ~~[and the court chooses to order forfeiture of the bail]~~, the court shall within
107 30 days of the failure to appear issue a bench warrant that includes the original case number.
108 The court shall also direct that the surety be given notice of the nonappearance. The clerk of
109 the court shall:

- 110 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
111 days to the address of the surety ~~[or its agent as listed on the bond]~~;
- 112 (b) notify the surety ~~[or its agent]~~ as listed on the bond of the name, address, and
113 telephone number~~[, and fax number]~~ of the prosecutor;

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

116 (d) ensure that the name, address, and telephone number of the surety or its agent as
117 listed on the bond is stated on the bench warrant.

118 (e) mail notice of the failure to appear to the bail agent if the surety is different than the
119 producer's agent.

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

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

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

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

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

133 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
134 to a warrant for failure to appear on the original charges[~~, the surety may file a motion with the~~
135 ~~court to~~] and the court is notified of the arrest, or the court recalls the warrant due to the
136 defendant's having paid the fine and prior to entry of judgment of forfeiture, the court shall
137 exonerate the bond. [~~The surety shall deliver a copy of the motion to the prosecutor.~~]

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

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

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

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

147 (iv) the surety has transported or agreed to pay for the transportation of the defendant
148 from a location outside of the county back to the county where the original charge is pending,
149 and the payment is in an amount equal to government transportation expenses listed in Section
150 76-3-201; or

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

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

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

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

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

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