

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO BAIL BONDING AGENTS

1995 SUNSET REVIEW



**Joint Legislative Sunrise/Sunset Review Committee
1995-1996 Members**

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the **regulation of Colorado Bail Bonding Agents** by the Colorado Division of Insurance. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to §24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under article 7 of title 12, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

Regulatory Agencies has completed its 1995 Sunset Review of the regulation of Colorado bail bonding agents by the Colorado Division of Insurance. The Department recommends that the Division continue to regulate those individuals who write bail bonds in Colorado pursuant to §12-7-101, et. seq., C.R.S. There are currently over three hundred twenty persons licensed as bail bonding agents in Colorado.

The Department of Regulatory Agencies also makes the following recommendations intended to improve the administration of the bail bonding agent's law and to assist in the fair and equitable administration of the bail bonding industry in Colorado:

1. The Department recommends that the Division continue to regulate those individuals who write bail bonds in Colorado.
2. The General Assembly should amend §12-7-103(3)(b), C.R.S., to provide for the forfeiture of the bail bonding agent's qualification bond in fourteen days when procedures outlined in §16-4-110, C.R.S. have been exhausted and a complaint is filed by a municipal, county, district or any other court.
3. The General Assembly should repeal §12-7-103(2), C.R.S., requiring applicants to furnish the Division references that applicants are of good moral character.
4. The General Assembly should amend or repeal language within §12-7-106, C.R.S., which is generally unenforceable or a duplicate provision.
5. The General Assembly should add §12-7-101.5, C.R.S., giving the Commissioner specific authority under this article to promulgate such rules as deemed necessary for the administration of the bail bonding agent regulatory program.

6. The Commissioner of Insurance and the Bail Bonds Advisory Committee should work collectively with the Judicial Department and the bail bond industry to develop a uniform bail bond instrument, collateral receipt, and discharge of bail bond notice.

7. The Colorado Division of Insurance should work with all Colorado Courts to enhance programs and procedures at the court level to collect on nonappealable forfeited bail bond judgments.

8. The Commissioner of Insurance should promulgate rules that: outline the powers and duties of the advisory committee; describe the qualifications and process of licensure; identify penalties stipulated for failure to submit required reports and records; identify penalties for failure to pay on forfeited bonds; and clarify terms of noncompliance with other sections of the bail bonding agent's law.

9. The Commissioner of Insurance and the Bail Bonds Advisory Committee should improve citizen outreach, education and advocacy efforts.

10. The Commissioner of Insurance and the Bail Bonds Advisory Committee should examine industry concerns and the relationships between the bail bonding agents, law enforcement departments, the judicial system, surety companies and the Division of Insurance

11. The General Assembly should authorize and fund the creation of a bail bond program investigator to assist the Division of Insurance with the enforcement of the bail bonding agent's law.

BACKGROUND

The Sunset Process

Colorado law requires that state regulation of persons licensed as professional bail bonding agents be reviewed by the Joint Legislative Sunrise/Sunset Review Committee of the Colorado General Assembly prior to July 1, 1995. The statute which authorizes regulation of bail bonding agents is found at §12-7-101 C.R.S., et. seq. The General Assembly has provided that this regulatory program will be repealed, effective July 1, 1996, unless the legislature acts to extend the program prior to that date. The purpose of this report is to review the regulatory program administered by the Colorado Division of Insurance and to examine the practices and issues presented by the bail bonding industry and other related interests. The report also includes recommendations to the General Assembly regarding the termination, continuation, or modification of the bail bonding agent regulatory program.

This regulatory program's first sunset review was completed in 1992 and it was recommended that a second review be conducted this year to closely monitor the outstanding issues and trends in the industry. Some of these issues were addressed in legislation enacted during the 1995 legislation session which was supported by the Bail Bonds Advisory Committee, and the Division of Insurance. The analysis presented here includes a review of this legislation and the June 1992 Sunset Review report and recommendations. Other relevant statutes and regulations were studied and a literature review on the subject of bail bond practices was completed. Regional states were surveyed regarding their regulatory program and interviews were conducted with Division of Insurance personnel, county and district court officials, and bail bonding agents. Executives with the Pioneer General Insurance Company and the Amwest Surety Insurance Company were also interviewed because together they serve as surety on over half of the bonds written in Colorado. Lastly, two representatives from the United States Internal Revenue Service were interviewed regarding an information gathering project on the bail bond industry.

**History of Bail
Bond
Regulation in
Colorado**

General Origins

The pretrial release of defendants is strongly founded in constitutional law. The Eighth Amendment of the U.S. Constitution states, "Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted." Section 20 of Article II of the Colorado Constitution has similar language that prohibits excessive bail and cruel or unusual punishments. The fundamental belief being that a defendant's pretrial release affords an opportunity to develop an adequate defense. Implicit in this protection is also the presumption of innocence until judgment is rendered.

Pursuant to §16-4-101, C.R.S., "All persons shall be bailable before conviction, except in a prosecution for a capital offense in which the proof is evident or the presumption great." Section 16-4-104, C.R.S. outlines the state's bail alternatives which include; (1) release on a personal recognizance bond or (2) execution of a bond secured by cash, stocks, bonds, or real estate. It is the second bail alternative that involves bail bonding agents who act as commercial sureties for defendants unable to independently raise funds for bail. The primary justification for Colorado's regulation of the bail bond industry is to protect the public welfare of those persons in need of a commercial surety.

State regulation of bail bonding agents by the Colorado Division of Insurance dates from 1963. In that year, the General Assembly adopted a law to provide for the licensing and regulation of the professional bailbondsman. The original term of professional bailbondsman was updated in 1995 to bail bonding agent. References to both terms are contained within this report and identify the same individuals.

Early Licensure Practices

The 1963 statute defined a professional bailbondsmen as "any person who furnished bail, whether for compensation or otherwise, in five or more criminal cases in a county with a population of 50,000 or more or any person who furnished bail in two or more counties, one of which having a population of 50,000 or more." The focus of this early definition appears to be on the practice of acting as surety for persons seeking bail and makes no reference to any requirement that a bailbondsmen be associated with an insurance company. Licensing was therefore available for both surety and "cash" or "pocket" bailbondsmen on the security of a qualification bond held for the People of Colorado and the Colorado Division of Insurance.

In 1965, the definition of professional bailbondsmen was significantly amended. A clear reference to the appointment of an insurer by power of attorney to execute or countersign bail bonds was introduced. Despite this change in definition the Division continued to issue licenses to cash and surety bail bonding agents until 1988 when a policy reversal was introduced. The Division adopted a policy that the language in §12-7-101(4), C.R.S., defining bail bonding agents requires that only individuals "appointed by an insurer" could be licensed in Colorado. The Division therupon started denying applications for new "cash" bail bonding agent licenses. In 1990, the Division further moved to revoke the licenses of the remaining 18 cash bail bonding agents. The Division's policy to deny new cash bail bonding agent licenses was ultimately upheld [In The Matter of Juan Collazo, No. 89-18 (Division of Insurance, December 26, 1989)]. However, the Division was "equitably estopped from revoking" the licenses of the remaining cash bail bonding agents [In The Matter of Douglas F. Britten, et. al., No. 89-19 (Division of Insurance, October 18, 1990)]. This matter was additionally upheld upon appeal.

The 1965 changes also authorized for the first time the promising and holding of collateral by the bailbondsman to secure a defendant's surety bond. Subsequent legislation from 1971 to 1995 gradually contributed to the development of the bail bonding agent regulatory program now under examination for sunset review.

Update on 1992 Sunset Review Recommendations

The first sunset review of the bail bonding agent regulatory program was completed in June, 1992. The report's recommendation that the bail bonding agent regulation and licensure program continue was supported by that General Assembly. Four principal themes were presented in the Department of Regulatory Agencies' recommendations. The themes included the examination of an alternative 10% court based bail reform program, increasing the economies of scale between cash and surety bail bonding agents by raising the qualification bond amount, the introduction of controls over transactions between defendants and bail bonding agents, and the suggestion of improvements in the Division of Insurance's administration of the regulatory program.

The Department's recommendations that language giving the Division of Insurance priority in collecting on final nonappealable judgments from forfeited bonds was adopted. The recommendation that the Commissioner of Insurance appoint a Bail Bonds Advisory Committee was also adopted. A three person committee met almost monthly since its inception to discuss bail bond industry issues. Additionally, Senate Bill 95-097 increased the size of this committee to include a fourth member, representing the surety insurance company interests. Administratively, the Division of Insurance recently implemented the recommendation that the bail bond examination be updated and validated.

The recommendation to study the Colorado University Law School bail reform research implementing a 10% court based bail system was not supported, and it failed at the committee level in 1993. The recommendation to increase the qualification bond from \$50,000 to \$250,000 was also not adopted. The Department does not recommend the reintroduction of these issues for additional consideration. The 10% court based bail system successfully operates in a number of states, most notably Kentucky. However, there is no convincing evidence that such a system would operate more effectively in Colorado. The recommendation to increase the qualification bond sought to address inequities of regulation between cash and surety bail bonding agents. In 1994 only eleven cash bail bonding agents remain licensed. To impose such regulation on this limited segment of the bail bond industry appears excessive.

The recommendations to use a uniform bail bond instrument and a standardized collateral receipt to introduce transaction controls between defendants and bail bonding agents were not supported by the General Assembly. These transaction control recommendations, however, are reintroduced in this report. Lastly, the recommendation to improve recordkeeping efforts within the bail bond program has not been significantly implemented. This is likely due to the limited availability of personnel and other resources in the bail bonding agent regulatory program.

Enactment of Senate Bill 95-097

The Commissioner of Insurance and the Bail Bonds Advisory Committee jointly supported the sponsorship by Senator Perlmutter and Representative Adkins of Senate Bill 95-097 to introduce changes in §12-7-101, C.R.S., et. seq. The bill was successfully signed into law and is effective on July 1, 1995. There are eight notable changes introduced to the Bail Bonding Agent's law which follow:

- (1) A prelicensure education requirement for eight clock hours of certified instruction is now required. Specifically, two clock hours are required on the criminal court system, two clock hours on bail bond industry ethics, and four clock hours related to bail bond laws.
- (2) A continuing education requirement for six clock hours every two years is now required. It is further stipulated that two clock hours of the continuing education be on bail bond industry ethics.
- (3) An additional member has been added to the Bail Bonds Advisory Committee which is intended to introduce representation from the surety insurance companies.
- (4) The denial, suspension, revocation, and refusal to renew a bail bonding agent license is authorized if an agent fails to pay "a final nonappealable judgment award for failure to return or repay collateral received to secure a bond."
- (5) Bonding agreements must now be signed and in writing. Language was also introduced restricting charges that can be assessed as fees to defendants for collateral storage to only actual storage costs.
- (6) Bail bonding agents are prohibited from posting bond in the name of a corporate surety after this authorization has been withdrawn.

- (7) The Commissioner of Insurance is empowered to forfeit a qualification bond to pay any final nonappealable judgment award for failure to return collateral to a defendant and to cover the defendant's costs and attorney fees if applicable.
- (8) Bail bonding agents are required to post bond within twenty-four hours of full payment or the execution of a signed contract outlining a payment plan. The new provision further requires that the bail bonding agent refund all cash, release all liens, and return all collateral collected within forty-eight hours if the bond is not posted within the twenty-four hour period.

Noncompliance Audit by The U.S. Internal Revenue Service

Approximately three years ago, the U.S. Internal Revenue Service contacted the Colorado Division of Insurance to announce its desire to conduct an information gathering project on bail bonding agent tax compliance. The results of the project revealed a serious compliance problem with regard to unreported income in the bail bond industry. A sample of eighty-one persons was drawn from a population of two hundred eighty-one licensed bail bonding agents. "Those selected had either failed to file a tax return at all or had filed but had understated gross receipts by at least \$25,000 in 1990" (Presentation to Bail Bonds Advisory Committee: Colorado Division of Insurance, November 22, 1994). The results revealed that forty-one bail bonding agents failed to file a tax return. This accounts for a fifty-one percent noncompliance rate. The national average for noncompliance is reported at ten percent. The Colorado bail bonding agent noncompliance rate was five times the national average. The Internal Revenue Service has collected back taxes and assessed penalties that will easily exceed \$1,000,000. The Colorado Department of Revenue has been notified by the Division of Insurance and the Internal Revenue Service. An assessment of what action the Department of Revenue should take is under discussion.

SUMMARY OF STATUTE**Bail Bonding
Agent
Licensure**

Colorado bail bonding agents are directly regulated under the "bail bonding agent's law," §12-7-101, C.R.S., et. seq. This act also places that regulation within the Colorado Division of Insurance. The key portion of this law requires that, "no person shall act in the capacity of a bail bonding agent or perform any of the functions, duties or powers of the same unless that person is qualified and licensed as provided in this article" (§12-7-102(1), C.R.S.). A bail bonding agent "means any person who furnishes bail for compensation in any court or courts in this state and who is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and who is other than a full-time salaried officer or employee of an insurer or person who pledges United States currency, United States postal money order, cashier's check, or other property as security for a bail bonds in connection with a judicial proceeding, whether for compensation or otherwise" (§12-7-101(4), C.R.S.). An insurer is also defined within the act as "any domestic or foreign corporation, association, partnership, or individual engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state" (§12-7-101(3), C.R.S.).

The result is licensure of two types of bail bonding agents: (1) a surety bonding agent, backed by a surety insurance company or other insurer and (2) a cash bonding agent, who is backed only by a cash qualification bond of up to fifty thousand dollars held in trust by the Division and People of the State of Colorado. Only individuals may be licensed, and law enforcement officials or judicial officers are specifically banned from licensure as a bail bonding agent. Applicants for the bail bonding agent license must be eighteen years of age, a person who has not been convicted of a felony within the last ten years, a person who has not committed or engaged in an act described in §12-7-106(1), C.R.S. and who has completed at least eight clock hours of prelicensure education as outlined in §12-7-102.5, C.R.S. (1995). Each license is valid for no more than one year and they all expire on January 1st of each year. Beginning in some cases with January 1, 1996 and in all cases by January 1, 1997, bail bonding agents seeking to renew their license are required to complete at least six clock hours of continuing education every two years (§12-7-103.5, C.R.S.)

Application Requirements

In addition to basic background information, applicants for a bail bonding license must provide the Division with references of good moral character, a complete set of certified fingerprints, and a full-face photograph. There is no requirement in the statute, however, that background checks on applicants by law enforcement agencies be performed. Requirements for the qualification bond which must be posted by each applicant are also set out in the bail bonding agent law. Each qualification bond must be an amount not less than fifty thousand dollars and must meet the Division's requirements as to form. These bonds are intended to insure full and prompt payment on any bail bonds issued by a bail bonding agent to any court who has declared the bond forfeited and who was unable to collect on the bond under conditions of §16-4-110, C.R.S., et. seq. Bail bonds which are declared forfeited by a court can then be collected from the qualification bond through the Division, upon completion of an administrative hearing. The Division also follows up and notifies the surety insurance company of the order to make payment on the qualification bond, or the agent's license will be suspended. The licensed bail bonding agent is also directed that they may only employ individuals who could qualify for a license under state law. License fees are set by statute at two hundred dollars per year.

**Bail Bonds
Advisory
Committee**

The Commissioner of Insurance as a result of recent legislation is charged to appoint a four member Bail Bonds Advisory Committee. The committee is created in §12-7-104.5, C.R.S., and is intended to "advise the commissioner on issues concerning bail bonds and on complaints concerning licensees and the bail bond industry." In 1995, language was also added to the bail bonding agent's law, directing the advisory committee to "make recommendations to the commissioner with respect to the requirement for continuing education and the standards for qualifying courses and programs for certification for bail bonding agents." Member representation includes one bail bonding agent, an attorney, a company representative and a representative from the Division of Insurance. The members serve for a term of one year and there is no limitation in statute on the number of terms each member may serve. Vacancies are also filled by the Commissioner of Insurance. This section is listed as repealed, effective July 1, 1996, conditional upon review as provided for in §2-3-1203, C.R.S. The Department recommends that the Bail Bonds Advisory Committee be continued as a vital part of the state's bail bonding agent regulatory program.

**Bail Bonding
Agent
Regulation in
Colorado**

Semi Annual Reports/Professional Bonding Agent List

All bail bonding agents are required under §12-7-105, C.R.S. to file, under oath, semiannual reports to the Division on forms prescribed by the Division. The reports are due prior to January 31st and July 31st each year. The information required details the previous six months of activity and includes: the names of persons for whom bonds were written; the dates and amounts of the bonds issued; the court in which the bonds were issued; the fee charged for each bond; the amount of collateral or security received by the bail bonding agent on each bond and; the name of the surety insurance company under whose power of attorney the bond was written. There is no requirement that a total number or total amount of bonds written be reported by bail bonding agents. Also there is no requirement that bail bonding agents indicate the final disposition of each bond. Such dispositions might include: successfully discharged, vacated, failed to appear, forfeited, or pending. The addition of this information would provide the Division with limited management information, and it might assist in confirming complaint information if the disposition of the bond is in dispute. Each bail bonding agent is also required, under this section, to submit a PBAL, Professional Bonding Agent List form. This is submitted by the bail bonding agent listing the persons who are employees, partners and associates. It is intended to ensure compliance with §12-7-103(6), C.R.S. preventing the employment of persons who could not qualify for a bail bonding agent license. There is, however, no regulatory review of these forms and the only penalties assessed are for failure to file the report. It should also be noted that these reports are only used as reference materials in resolving complaints. Information reported is not compiled nor is it transferred into the Division's computer systems in any manner.

Licensure Actions and Alternative Civil Penalties

Section 12-7-106, C.R.S. provides a list of sixteen grounds for the Division to deny, suspend, revoke, or refuse to renew, as appropriate, the license of any bail bonding agent. A summary of these follows:

- "any cause for which the issuance of the license could have been refused by the Division if it had been known";
- failure to post a qualification bond or forfeiture or cancellation of the bond;
- fraud, material misstatement or misrepresentation in obtaining the license;
- abuse of client funds;
- dishonest practices;
- willful failure to comply with the statute;
- "any activity prohibited in §12-7-109(1), C.R.S.";
- default in payment to the court of any bond;
- conviction of a felony within the last ten years;
- service of a sentence upon a conviction of felony within the last ten years;
- revocation of a bail bonding agent license within the last five years anywhere in the United States;
- display of incompetence or untrustworthiness;
- "failure to report, to preserve and retain separately, or to return collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral";
- "conviction of an unlawful entry into a residence by any bail bonding agent or such bonding agent's representative or employees in violation of §16-3-201, C.R.S.";
- soliciting business where prisoners are confined, arraigned, or in custody and effective July 1, 1995;
- "failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond (effective July 1, 1995)."

The Division, in acting to deny, revoke, or suspend licenses, must afford the "aggrieved person" an opportunity for hearing pursuant to the Administrative Procedures Act before taking any final disciplinary action. The Division is also empowered to levy a fine of no less than three hundred and no more than one thousand dollars for each offense. However, the fine is levied in lieu of revoking or suspending the offending party's license. In such cases, only if the licensee fails to pay the fine within twenty days can the Division also revoke or suspend the license.

Required Notification of The Courts and Surety Company

Section 12-7-107, C.R.S. requires the Division to keep the courts current on the licensure status of all bail bonding agents. Lists of licensed agents are provided to the courts and each bail bonding agent is required to show a pocket identification card whenever a bond is written. In the event of action against a licensee, the Division is also required to notify the courts. Furthermore, any surety insurance company, underwriting a bail bonding agent, must receive a list of all collateral taken in order to secure a defendant's bond. The Division may also receive a copy of this list on request and failure to keep this information as required is a violation of statute and grounds for suspension or revocation of the bail bonding agent's license.

Bonding Agreement Requirements and Fees

Most state statutes contain provisions placing a floor and ceiling amount on the premium fees that a bail bonding agent can charge. Section 12-7-108, C.R.S. establishes these parameters at no more than fifteen percent and no less than twenty dollars. This section was also amended in 1995 to require that "a bonding agreement shall be in writing and signed by the bail bonding agent and the principal." The section further stipulates that if the principal (defendant) is illiterate or does not read English, a third party must read and translate the agreement and, the bail bonding agent must attach a copy of this translation. The section was also amended this year to restrict the assessment of fees other than the bonding premium to actual charges assessed by a court, law enforcement agency or a collateral storage facility.

Prohibited Activities and Penalties

This section of the statute contains criminal penalties for specific activities which are illegal for bail bonding agents. The penalty for violation of any of the following prohibited activities is a misdemeanor, which includes a maximum one thousand dollar fine and/or one year of prison in the county jail. The same criminal penalty can be levied on any person who acts or pretends to act as a bail bonding agent without a license. Specifically, bail bonding agents are prohibited from the following sixteen activities:

- advising a client to employ a specific attorney;
- compensating an official of the judicial system;
- inappropriately compensating an attorney;
- compensating a client;
- failure to return any collateral or security within ten working days from receipt of discharge of the bond by the court;

- to accept compensation other than collateral or a bond fee, from a client. The bail bonding agent is also required to follow specific provisions with respect to collateral or security in tangible or real property;
- to coerce or suggest that a client commit a crime;
- to act as a bail bonding agent if in default in securing any person's bond;
- to fail to inform the court of inaccuracies in any property value schedules of security involving a bond;
- to pledge property in securance of a bond which is already pledged for another bond;
- to act in the name of a surety insurance company without authorization or after such authorization has been withdrawn in writing;
- failure to adequately preserve, separately retain and, account for all collateral security taken from a client to secure payment of a bond. If the bail bonding agent fails in the management or return of collateral as provided the Division is empowered to take possession of the collateral. Any costs to the Division or costs to any other party having a nonappealable judgment rendered in retrieving collateral due them is now borne by the bail bonding agent's qualification bond;
- the signing of blank bail bonds or the execution of a power of attorney naming another to countersign bail bonds in the licensee's name;
- the posting of more than one bond at any one time on a single client;
- failure to issue a receipt for collateral or security taken from a client;
- failure to post bond within twenty-four hours of payment or, the failure to refund monies, release liens, and return collateral within forty-eight hours of receipt of such payment or other contract.

Tax on Cash Bonding Agent Fees

In 1979, the General Assembly levied a tax on the fees charged by cash bail bonding agents. This was done to introduce economies of scales on the tax burden of both cash bonding agents and surety insurance companies. Section 12-7-111, C.R.S. specifically requires that cash bail bonding agents pay the Division of Insurance a tax on their fees and that the tax, "shall be the same as the tax levied on insurance companies by §10-3-209(1), C.R.S."

Title 16. Release on Bail Regulations

Title 16 of the C.R.S. sets out procedures followed in the state courts in criminal matters. Article 4 discusses release from custody pending final adjudication of a case. This article is important in any discussion of bail bonding agents because it identifies the requirements and the standards used by Colorado courts in determining the right to bail and the different kinds of bail bonds which may be used.

In 1992, the legislature amended parts of §16-4-101 C.R.S., et. seq. in order to clarify certain matters pertaining to the kinds of bond required for pretrial release of a defendant. In particular, the specifics of bonds secured by real estate were amended to more adequately reflect real estate legal practices. Although these amendments to the law do not change the kinds of collateral which may be accepted, they do change the processes and documents which must be used whenever real estate is involved. Finally, it should be observed that the provisions of §16-4-101, C.R.S., et. seq. are administered by the Colorado Judicial Department and must be complied with by all bail bonding agents.

SUNSET ANALYSIS

Mission

The Colorado Division of Insurance defines its mission as one of "consumer protection." The bail bonding agent regulatory program is notably small and does not command many resources. Legislation; however, has been introduced in the 1992, 1993, and 1995 general sessions. Each legislative change generated substantial enhancements to both administrative procedures and statutory language. The scope of these changes is broad. Terms have been redefined, additional prohibited behaviors introduced, prelicensure and continuing education included, and a number of consumer protections of collateral and security enacted.

The central question of a sunset review is: "Whether regulation by the agency is necessary to protect the public, health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation" (§24-34-104(9)(b)(I), C.R.S.).

Protection of the public welfare appears to be the central justification for the regulation of the bail bonding industry. This welfare may be seen as a constitutional protection from excessive bail and unnecessary incarceration. It could also originate from a desire to impose governmental oversight upon commercial bail bond sureties. Whatever the origin, this study found no advocate for the deregulation of the bail bonding industry. This study also raises questions concerning the need for extensive changes to the bail bonding agent law. This research further reveals that a change in focus on enforcement of the laws provision and, improving the understanding of interrelationships within the bail bonding industry, is a more productive pursuit.

**The Bail
Bonding
Industry
Relationships**

In Colorado, as with most other states, various insurance companies contract for the services of bail bonding agents. A total of eleven insurance companies are authorized by the Colorado Division of Insurance to act as surety on bail bonds. The overwhelming majority of bail bonding agents licensed in Colorado are surety agents. This implies that the bail bonding agents are responsive to the surety insurance company and are also owners or associates in a bail bonding business. It should be noted that some bail bonding agents write bonds for a number of surety insurance companies. There are two additional key actors within the bail bonding industry, the MGA's or managing general agents and direct agents. A description of the organizational and financial relationships within the bail bonding industry is presented in the following paragraphs (See also Figure 1).

Figure 1

- - - - means

_____ means

The bail bonding agent's clients are the individuals who have been arrested and charged with any number and type of crimes. The relatives or friends of defendants are often responsible for seeking the services of the bail bonding agent to secure the defendant's release. This is necessary since state law prohibits the direct solicitation of defendants by a bail bonding agent. There appears to be a high degree of loyalty to bail bonding agents from repeat offenders. The bail bonding agent is always free to decide which bonds they will or will not write. This is the agent's primary role, "the bonding out of defendants". Once the defendant is released, many agents require the defendant to appear in their offices for further instruction and to pressure them into appearing at the appointed time. Should the defendant fail to appear and is presumed to have fled, the agent may then arrange for the services of an investigator or bounty hunter. Ultimately, if the defendant does not appear and a forfeiture judgment is entered against the bond, the bail bonding agent will make payment to the court. The bail bonding agent therefore has frequent interactions with judges, lawyers, police, sheriff's office, court clerks and bonding clerks, jailers, family members, friends and usually (but not always) the defendant. The bail bonding agent usually keeps half of the premium charged and one hundred percent of any other fees and charges assessed. It should also be noted if the bail bonding agent has made payment on a forfeited bond and later captures the defendant, the defendant is expected to reimburse the bail bonding agent for his costs, and will usually be returned to jail. If the defendant is not found, the collateral or security placed on the bond is now the property of the bail bonding agent.

In some instances the bail bonding agent is a direct agent and deals directly with the surety insurance company. This is not ordinarily the case. Usually bail bonding agents are found and hired by managing general agents (MGA's) or by the few direct agents that exist. The direct agent can be viewed as a type of supervisor and the MGA as a manager of many bail bonding agents all writing bonds for the same surety insurance company. Some MGA's also write bonds, but the majority of their business comes through the activity of their bail bonding agents. MGA's are the link between the surety insurance companies and the individual bail bonding agent. The power of attorneys granted by the surety are monitored and distributed by the MGA's. This is the industry's point of control over its bail bonding agents. Colorado has only one domestic and ten foreign surety insurance companies. One written source suggested that the MGA's retain approximately twenty-five percent of the premiums their bail bonding agents generate. The remaining twenty-five percent is forwarded to the surety insurance company.

The insurance company has a number of contractual and financial agreements in force. First, under Colorado law, the bail bonding agent and surety insurance company are the only parties recognized as having responsibility for bail bonding activities. The insurance companies consequently have a contract with individual bail bonding agents. Within this contract the bail bonding agent usually is required to provide collateral or other securities to the insurance company as a protection against possible losses. The surety insurance company's portion of agent premiums is retained as profit and also placed within a "build up fund". The "build up fund" is an additional protection the insurance company provides itself for any claims it may need to pay to avoid forfeiture of a qualification bond, or other regulatory difficulty. The insurance companies would have similar agreements with direct agents, and MGA's would have managerial type contracts with the company, focusing on the control of surety power of attorneys, required to write bonds in Colorado courts.

The surety insurance company is also responsible for submitting the qualification bond for its agents. The actual holding of funds to back the qualification bond may be part of the contract with the bail bonding agents but, this information was not available.

A final note on the bail bonding industry structure involves apparent changes in the issuance of personal recognizance bonds. Interviews with the industry suggested that a large number of felony and capital case offenders, with a history of failure to appear situations, are sometimes released on personal recognizance bonds. This may be contrary to §16-4-101, C.R.S. that states "all persons shall be bailable before conviction, except in a prosecution for a capital offense in which the proof is evident or the presumption great." Should this suggestion have merit it would be worthy of further investigation. During this study a confidential review of approximately ten bond documents from one court session appears to support the industry's suggestion.

Enforcement of the Statutes

Precise information on the successful enforcement of the bail bonding agent's regulatory program is not easily determined. This is likely due to the volume and manner in which data is stored. It is fair to state that the Division has closed seventy-two percent of the cases it received in 1994. The precise nature of the case dispositions however remains unclear. Again, an overwhelming seventy-four percent of the complaints received involved bail bond forfeitures. The processing of these complaints at the state level may be a duplicate, costly, and inappropriately placed responsibility. More discussion of this issue is presented within Recommendations two and eight.

From July, 1994 to April, 1995, approximately forty-five administrative hearings were sought. As a result **four bail bonding agent licenses were revoked, eleven licenses suspended, and twenty-four agents elected to pay a stipulated penalty in lieu of an administrative hearing.** The semi annual reports, submitted by bail bonding agents, only reflect individual activity by bail bond. There is no consistent compilation of activity by bail bonding agent, surety insurance company or even by county. There is also no accounting for the final status on each bond. The semi annual report data is always in a raw format without totals. Efforts to review the accuracy of the reports are only made when complaints are under investigation. This level of data can present significant difficulties with the management of a regulatory program.

The limited availability of data and restrictions in the capability of recordkeeping efforts present a severe limitation to the program's ability to enforce the thirty-two prohibited practices and other punishable offenses. **A review of available summary reports appears to suggest that only six of the thirty-two regulated activities can easily be enforced by the Division.** These activities usually involve forfeited bail bonds, discovery of prior felony convictions, identification of qualification bond problems, and the failure by bail bonding agents to submit appropriate reports and forms.

... a change is essential to the continued operation of the bail bonding agent regulatory program.

The research clearly reveals that a change in focus towards enhanced enforcement and increasing resources is essential to the continued operation of the bail bonding agent regulatory program. Without this shift in approach, the legislative changes implemented in the past three years may have a minimal or no effect on protecting the public welfare and serving the public interests.

RECOMMENDATIONS

Continuation of the Bail Bonding Agents Regulatory Program

The Department recommends that the Division continue to regulate those individuals who write bail bonds in Colorado pursuant to §12-7-101, C.R.S., et. seq. The Department also submits that changes are needed to: (1) clarify and eliminate duplicate administrative procedures; (2) improve efforts and resources to increase enforcement of the bail bonding agent's law; (3) enhance citizen advocacy efforts and; (4) support efforts to improve education and communication within the bail and related industries.

The primary justification for Colorado's regulation of the bail bond industry is to protect the public welfare of those persons in need of a commercial surety. While no exact number of bonds written is available, the volume generated by over 320 agents is considerable. Additionally in 1994, the Colorado Division of Insurance received a total of six hundred fifty-six complaints. Only six percent of the complaints were filed by individual citizens. The majority involving reports of damage, loss or mismanagement of personal and real property held as collateral on their bonds. Twenty percent of the complaints involved the failure of bail bonding agents to report their bonding activities to the Division and, an overwhelming seventy-four percent of complaints were from Colorado courts on unpaid bond forfeitures.

The Colorado Department of Regulatory Agencies believes these facts support the continual regulation of this industry to protect the public welfare of those persons in need of a commercial surety's services.

Recommendation 1. The General Assembly should continue the regulation of bail bonding agents as provided for in §12-7-101, C.R.S., et. seq.

**Eliminate
Duplicate
Bond
Forfeiture
Procedure**

Recommendation 2. The General Assembly should amend §12-7-103(3)(b), C.R.S. to provide for the forfeiture of the bail bonding agent's qualification bond in fourteen days when procedures outlined in §16-4-110, C.R.S. have been exhausted and a complaint is filed by a municipal, county, district or any other court.

When a defendant fails to appear, the court judge under §16-4-103 (3), C.R.S., "shall issue notice of declared forfeiture or judgment and afford an opportunity for hearing under §16-4-110, C.R.S. to all persons pledging security for the defendant's appearance, to show cause, if any, why their security should not be declared forfeit and due the court."

At the "show cause hearing," which must occur within twenty days, the judge can elect to grant additional time for a bail bonding agent to find the defendant, vacate the bond and relieve the bail bonding agent of responsibilities to find the defendant or, the judge may enter a judgment forfeiting the bond. If the bond is forfeited, the bail bonding agent must make payment to the court of record equal to the amount of the bail bond issued by that court. If collection is not made at the court level, a complaint is referred by the court to the Colorado Division of Insurance.

Section 12-7-103(3)(b), C.R.S. then directs that each complaint be investigated by the Division and that the qualification bond of the bail bonding agent be forfeited after an administrative hearing. This procedure is neither efficient nor effective and is an unnecessary duplicate and a costly effort. Section 16-4-110, C.R.S. clearly states that the bail bonding agent's "...liability under the bond may be enforced, without the necessity of an independent action...". Four hundred eighty-five forfeited bond complaints were referred to the Division in 1994. This type of complaint accounts for seventy-four percent of all the complaints received.

The investment of state resources on these complaints causes limited resources to be diverted from statewide consumer protection and enforcement efforts. Additionally, the courts are the chief beneficiary of forfeited bond collections and, should therefore be the principal actors in this process. Recommendation seven of this report suggests that the Division should work with the courts to enhance their forfeited bail bond collection efforts. The present statutory requirement for an administrative hearing applies to all forfeited bail bond complaints received by the Division. Each administrative hearing process will on average take eight to twelve months to complete. Investigating each complaint requires considerable resources and involves personnel from the Division's investigation, legal services, and licensing offices. The State Attorney General's Office, and the resources of an Administrative Law Judge are also exhausted to secure a second judgment and payment on a bond previously forfeited by the court. During this period the bail bonding agent's license is suspended but, they often continue to write bonds since no timely or inexpensive method exists to notify over three hundred court offices. There is also no existing method to confiscate the license of suspended bail bonding agents.

The Department believes if a forfeited bond cannot be collected at the court level, statutes should direct the Division to send or deliver a written notification, to all parties involved, declaring the bail bonding agent's qualification bond forfeited and license revoked if payment is not made within fourteen days. The Department, however, wishes to emphasize that the procedures supported by §16-4-110, C.R.S. must be exhausted before the Division seeks to revoke the qualification bond of an agent. The Department additionally, does not wish to stop aggrieved parties from pursuing additional administrative hearing avenues. The provisions in Article 4 of title 24, C.R.S. must be preserved but, used only when the bail bonding agent believes the case merits special consideration.

This approach should protect the interests of the bail bond industry, expedite the payment of revenues due the courts of record, and provide for the prompt and economic implementation of state regulation.

**Repeal
References
Requirement**

Recommendation 3. The General Assembly should repeal §12-7-103(2), C.R.S., requiring applicants to furnish the Division references that applicants are of good moral character.

Each applicant for licensure as a bail bonding agent is required to "...satisfy the division of such applicant's good moral character by furnishing references thereof " (§12-7-103(2), C.R.S.). There is considerable question on the effectiveness of this approach. Essentially, the applicant need only find three individuals who will state in writing that the applicant is of good moral character. There is no requirement that those offering references must be previous employers, clergy, long term associates, or even of good moral character themselves. Furthermore, any efforts to verify the references would be costly and would not significantly improve the Division's satisfaction of good moral character. Other requirements of licensure outlined in both §12-7-102 and §12-7-103, C.R.S. are clearly adequate and they provide more effective ways to satisfy any condition of good moral character. Additionally, each applicant is required to submit a photograph and a certified set of finger prints for the purpose of a background check, conducted by the Colorado Bureau of Investigations.

The Department submits that the good moral character references requirement for licensure is ineffective, unnecessary and, should be repealed.

**Licensure
Actions**

Recommendation 4. The General Assembly should amend or repeal language within §12-7-106, C.R.S., which is generally unenforceable or a duplicate provision.

The provisions of this section provides the Division authority to deny, suspend, revoke, or refuse to renew the license of any bail bonding agent. This authority is a critical element of any licensure program, and it is equally important in the case of bail bonding agents. The strength of this authority is weakened, however, when enforcement reasons are generally unenforceable. The Department believes that one provision contained in this Section should be repealed and that two provisions should be amended to improve the enforceability of this element of the bail bonding agent's law.

Paragraph (1)(e) authorizes a license penalty for "Fraudulent or dishonest practices in the conduct of the business under the license." This provision should be repealed as an unenforceable and duplicatative provision. Language currently exists to penalize the licensee for any cause that would have resulted in licensure denial, and for fraud, material misstatement or misrepresentation in obtaining the license. These provisions and others dealing with the misappropriation of monies, previous felony convictions, and revocation of a license in another state are sufficient to discover any fraudulent or dishonest practices that would call for action against the bail bonding agent's license. The general nature of this provision also makes its defense questionable. Arguing that a general offense was fraudulent or dishonest could be impossible unless the offense was specifically identified in law.

Paragraph (1)(f) authorizes a license penalty for “willful failure to comply with or willful violation of any provisions of this article or of any proper order, rule, or regulation of the division or any court of this state.” This provision should be amended by deleting references to “willful”. The Department believes that burden of proof in such cases should rest with the bail bonding agent not the state regulatory program. If the state were required to show “willful failure to comply” it could be forced to license individuals, who might act against the public’s welfare and best interest. The exercise of a license penalty should be authorized for any failure, willful or otherwise, to comply with law, order, rules or regulations. Such an amendment would act to further protect the public by not allowing bail bond agents who have failed to comply with a specific requirement to practice in Colorado.

Paragraph (1)(l) authorizes a license penalty when the Commissioner of Insurance judges that the licensee has demonstrated incompetence or untrustworthiness. This provision should be amended as follows: "When in the judgment of the commissioner AND IN THE JUDGMENT OF A SURETY INSURANCE COMPANY, FOR WHOM THE LICENSEE IS AN AGENT, CAUSE CAN BE DEMONSTRATED THAT the licensee has in the conduct of such licensee’s affairs under the license demonstrated incompetence or untrustworthiness THE LICENSE OF SAID LICENSEE SHOULD BE REVOKED." This amended language is intended to strengthen the judgment provision by involving both the Commissioner of Insurance and the appropriate surety insurance company. This recommended change is also intended to involve the surety insurance companies in protecting the public welfare and interest, through the identification of incompetent or untrustworthy bail bonding agents. The recommendation is also balanced and results in care to propose revocation of a license only when cause can be demonstrated.

The impetus for this recommendation was provided by the Pioneer General Insurance Company. Recently, Pioneer General chose to stop a bail bonding agent from writing bonds under their surety authority. In their judgment this agent continually violated the state laws and did not demonstrate an interest in changing this illegal behavior. Under the terms of their agreement with the agent this matter was resolved and his authority to write bail bonds for them was revoked. However, nothing in the bail bonding agent's law prevents this agent from working with a second or third surety insurance company, despite his untrustworthy and illegal behavior.

This recommended amendment would encourage regulatory cooperation between the Commissioner of Insurance and the surety insurance companies regarding agents in Colorado. This provision would also provide for the public's protection by allowing for an efficient and effective means to revoke licenses when appropriate.

**Specific
Rulemaking
Authority
under Article
12**

Recommendation 5. The General Assembly should add §12-7-101.5, C.R.S., giving the Commissioner specific authority under this article, to promulgate such rules as deemed necessary for the administration of the bail bonding agent regulatory program.

The Commissioner of Insurance as the Division Executive is directed to administer the bail bonding agent regulatory program and to implement the provisions of Article 12. The Commissioner is granted rule making authority under Article 10 but the extension of this authority to Article 12 is unclear. The Division's policies and operating procedures may also need the support of rule, given that no legislative intent was ever enacted.

Until this year, there has been no requirement that the Commissioner promulgate any rules regarding bail bonding agent licensure. The only existing requirement is that rules exist to guide the administration of the new prelicensure and continuing education sections of the law. Recommendation 9 of this report, provides justification for promulgating rules and suggests the specific areas of statute that may benefit from the clarification that rules often provide. The Department believes that §12-7-101.5, C.R.S. should be added to provide legislative direction for the promulgation of bail bonding agent regulatory program rules.

Recommended Administrative Changes

Bail Bond Transaction Controls

Recommendation 6. The Commissioner of Insurance and the Bail Bonds Advisory Committee should work collectively with the Judicial Department and the bail bond industry to develop a uniform bail bond instrument, collateral receipt, and discharge of bail bond notice.

A surprising consensus exists between regulators, insurance companies, and bail bonding agents on the advantages of a uniform bail bond instrument, collateral receipt, and discharge of bail bond notice. It can be argued that the lack of uniformity with these three legally binding documents contributes greatly to the number of complaints from individual citizens.

Defendants and those assisting with their release may be in a highly emotional state, and often not prepared to fully comprehend the terms and implications of being released on a bail bond agreement. Once a bail bond is issued, there is no opportunity for a defendant or co-signer on the bond to ask for a change in the terms. If the bond contains conditions which are illegal or questionable, there is no opportunity to correct the issues. If the condition and value of collateral offered was not properly documented, a defendant could suffer damage or loss of personal property. If a defendant meets the conditions of their bond but fails to deliver a discharge of bail bond notice, any real property used as collateral might have a lien placed against it indefinitely. Additionally, defendants, bail bonding agents, regulators, judges, and court clerks could all benefit from the clarity and administrative benefits of uniform documents.

The implementation of a uniform collateral receipt will also assist the Division with enforcement of at least two new provisions of the Bail Bonding Agent's Law. The introduction of §12-7-106(1)(p), C.R.S. authorizes the Commissioner of Insurance to take action against a bail bonding agent for failure to return or repay collateral. Section 12-7-109(1)(k), C.R.S. also provides for the forfeiture of the bail bonding agent's qualification bond to pay a final nonappealable judgment award and any legal fees as appropriate. The Division's legal services office reports that in cases involving collateral damage or the failure to release a lien on real property, a lack of legally supportive documentation often leaves harmed persons no means of restitution of property.

The discharge of bail bond notice is issued by the court clerk when a defendant has met all the conditions of the bond. This document is varied in form. It can range from a cash register receipt to an official one page document. Each defendant must bring the notice to the bail bonding agent to have liens removed from their property and to have personal property and other securities returned. No clear direction is provided to defendants on their responsibility on this matter. A uniform bail discharge notice would help to avoid many difficulties with the efficient release of collateral.

Enhance Court Programs to Collect on Forfeited Bonds

Recommendation 7. The Colorado Division of Insurance should work with all Colorado Courts to enhance programs and procedures at the court level to collect on nonappealable forfeited bail bond judgments.

As referenced in Recommendation 2, last year the Colorado Division of Insurance received a total of six hundred fifty-six complaints. An overwhelming four hundred eighty-five of these complaints were from Colorado courts on unpaid bail bond forfeitures. This amounts to seventy-four percent of all the complaints received by the Division. Each of these complaints is investigated over an eight to twelve month period, involving the Division's investigation, legal services, and licensing staff, the State Attorney General's Office, and the resources of an Administrative Law Judge to secure a second judgment and payment on the same forfeited bond.

This activity is duplicative and, does not seem to be an appropriate responsibility of the Division. As stated in Recommendation 2 of this report, the courts should first be required to demonstrate that all enforcement avenues to collect on the forfeited bail bond have been pursued unsuccessfully. A failure to resolve forfeited bond issues at the court level can have a negative economic impact to the regulatory program. The investment of state regulatory resources in these cases diverts resources from citizen advocacy, and may prevent the Division from investing greater legal service resources to revoke licenses of bail bonding agents with more severe violations of law.

The data suggests that the majority of courts elect not to invest resources in the collection of forfeited bonds and instead refer complaints to the Division of Insurance. This fact was borne out through interviews with bail bonding agents and with county court officials. Bail bonding agents reported that in cases with special circumstances, complaints are often filed with the Division without their receiving due process or a notice. Court officials reported a lack of centralization and resources as the major reason for their not pursuing collection efforts at the court level. The Department believes that if the Division can work with court systems and provide assistance in enhancing existing programs and procedures these negative economic impacts can be reduced.

Further investigations on this challenge led to the discovery of a possible model program. The Denver County and District court bail bonds office initiated the ON THE BOARD PROGRAM in 1992. While Denver courts have the greatest volume of bail bonds written, there were 16 complaints forwarded to the Division in 1993 and no forfeited bond complaints forwarded in 1994. In interviews with the Denver Bail Bonds Office, it was learned that bond forfeitures do occur at normal industry levels. This program, however, uses a strong but fair collections approach, maintains a central point of information on unpaid forfeited bonds and, uses peer pressure to ensure prompt payments. The bonding office is also quick to correct its mistakes by refunding monies collected in error.

Specifically, the program operates in the following manner. When a judge has chosen to declare a bail bond forfeited, the bail bonding agent is expected to make prompt payment to the court. If after approximately seven days payment is not made, the agent is contacted in writing and verbally, and directed to make payment immediately. If payment is not received, the bail bonding agent is called the day before his name is placed on "the board". These calls are made every Monday and Wednesday and "the board" is posted on every Tuesday and Thursday. If an agent is listed on "the board" that bail bonding agent and all other bail bonding agents writing for the same surety insurance company are prohibited from writing ANY bail bonds in the Denver County and District Court system, until payment is made in full.

Surprisingly, this program is accepted and respected by representatives of the surety insurance companies, and by bail bonding agents themselves. The only criticized aspect of the program is the denial of bail bonding privileges of all other bail bonding agents writing for the same surety insurance company instead of the individual offenders. The bail bonds office reported that this is a new aspect of the program and, that it generates a significant amount of peer pressure to ensure payment of forfeited bail bonds.

The ON THE BOARD PROGRAM has proven to be an efficient and effective court based collection effort. In 1993, a total of \$411,038 and in 1994, \$398,505 in forfeited bond payments were collected and deposited into the court's general fund. The program's operating budget in 1993 was \$425,000 and in 1994 was \$355,000, demonstrating this program's overall self sufficiency. The materials needs for this program include a telephone and one clip board. Personnel resources include the full time coordination effort of one clerk and supporting efforts from two additional clerks.

Clarify Administrative Rules and Procedures

Recommendation 8. The Commissioner of Insurance should promulgate rules that: outline the powers and duties of the advisory committee; describe the qualifications and process of licensure; identify penalties stipulated for failure to submit required reports and records; identify penalties for failure to pay on forfeited bonds; and clarify terms of noncompliance with other sections of the bail bonding agent's law.

Currently, the bail bonding agent regulatory program is operated solely on the interpretation of §12-7-101, et. seq., C.R.S.. The absence of administrative rules can impede the enforcement of the bail bonding agent's law and, it could subject the Division to undue legal challenges on its operational policies. One might argue that the recent legal challenges by cash bail bonding agents, regarding their licensing in Colorado, reflects the compromised position of the bail bonding agent regulatory program. Challenges to statute interpretation might also be introduced based on the absence of a statement of legislative intent. Division policies in some cases can only be inferred from statute, legal opinions and administrative judge decisions.

Of specific concern is the Division's policy to use stipulated penalties in lieu of revoking or suspending licenses. Section 12-7-106(3), C.R.S. does provide the Commissioner of Insurance the option of imposing "a civil penalty in the sum of no less than three hundred dollars and no more than one thousand dollars for each offense." There is, however, no rule detailing the criteria used in setting the penalty level or in determining when this option should be used in lieu of license suspension or revocation. Reducing such processes to writing can only improve the Commissioner and Division of Insurance's enforcement position.

Providing similar detail on the process and requirements of licensure, on the appointment, powers and responsibilities of the Bail Bonds Advisory Committee, and for other aspects of this governing statute is also recommended.

Citizen Outreach, Education and Advocacy

Recommendation 9. The Commissioner of Insurance and the Bail Bonds Advisory Committee should improve citizen outreach, education and advocacy efforts.

An analysis of complaint data is often the basis used by regulatory programs to identify trends of prohibited practices and violations of law. In the case of defendants who use bail bonding agents, complaint data may be significantly under reported. Defendants are often unaware of their rights, more susceptible to prohibited practices, and may feel that no one is available to hear their complaints. In 1994, only six percent of the Division of Insurance complaints originated from individual citizens. One court official even admitted that he would not know how to direct a citizen's complaint. Often times the citizen's only source of information on the bail bonding process is from the bail bonding agents themselves, or from a jailer.

The Department feels that the Division's presence is not sufficiently felt or identified by defendants or by persons assisting in the release of a defendant. The Department also believes by investing greater resources for citizen outreach, education and advocacy, greater numbers of persons with questions, problems or serious complaints could be serviced. This could then lead to improved enforcement efforts, given that complainants would be more informed. The Department also acknowledges that improving citizen outreach, education and advocacy efforts could have a fiscal impact. This would be a justified fiscal impact if the affected citizens gained an advocate to hear their complaints.

Support Industry Efforts for Improvements

Recommendation 10. The Commissioner of Insurance and the Bail Bonds Advisory Committee should examine industry concerns and the relationships between the bail bonding agents, law enforcement departments, the judicial system, surety companies and the Division of Insurance.

A regulatory program should advocate, in the strongest fashion, for the protection of the public welfare. A regulatory program must also balance the concerns of the regulated industry. One justification offered for this sunset review only three years after the initial review was to monitor the trends and issues within this industry. Since that report, considerable legislation has been enacted, new leadership is directing the regulatory program, and a greater interest may exist within the industry to improve the quality of bail bonding services in Colorado. The continued discussion and examination of industry trends and issues will only improve the regulatory effort.

The Department recommends that the Commissioner and the Advisory Committee continue the examination of industry concerns and relationships. Representatives from courts, the judiciary, law enforcement and pretrial release programs should also be invited to participate in these discussions. At least three of this report's recommendations impact industry stakeholders as well as the judicial and law enforcement systems. The specific issues which cross over the traditional stakeholder boundaries included: collection activities on forfeited bail bonds, the development of uniform bail bond instruments, the promulgation of program rules, and even efforts to improve enforcement of the bail bonding agent's law.

Interviews with industry and non-industry interests revealed a number of emerging concerns which may be worthy of additional future discussion:

- Many interests are not completely aware of the large number of changes to the law and how these changes impact their operations;
- Provisions within Titles 12, 16, and 18 may be in conflict and contribute to confusion within the industry and the court systems;
- The failure in some cases for bail bonding agents to release liens on real property following the discharge of a bail bond;
- An apparent lack of reliable and manageable information exists regarding bail bonding activity at the court, agent, or any other level;
- Questions on who is responsible for ensuring compliance with income tax reporting by bail bonding agents, and what type of regulatory action is appropriate;
- What steps can be taken to expedite the processing of license renewals and requests for initial licensure.
- What amount of qualification bond protects the state's interests and is also practical within the industry;
- Should the licensure examination be strengthened;
- Clarification on the appropriate process for delivering a defendant after court hours who has failed to appear may be needed;
- Tensions appear to be growing between law enforcement and bail bonding agents;
- Concerns are being raised over the pretrial release of defendants with a history to flee, and who are arrested on capital offenses and ;
- Bail bonding agents are concerned about the practice of splitting bonds and holding an agent to a bond through the weekend and then having the court vacate the bond on Monday, only to release the defendant on a personal recognizance bond.

The intent of this recommendation is to identify the more practical daily concerns of all the interactive systems involved with the pre trial release of defendants. The Commissioner and Advisory committee may choose to implement this recommendation through special task forces, public hearings, open industry forums, or through varying the agenda and location of the committee's monthly meetings. In so doing, policymakers may claim success at increasing the quality of the industry systems and possibly for improving its regulatory programs.

Improve Citizen Protection and Regulatory Enforcement

Recommendation 11. The General Assembly should authorize and fund the creation of a bail bond program investigator to assist the Division of Insurance with the enforcement of the bail bonding agent's law.

In comparison to ensuring the solvency of insurance companies, the regulation of bail bonding agents and protection of arrested individuals does not make this program a priority concern. However, the program does seek to uphold a person's constitutional right to bail in order to develop an adequate defense. Without the investment of additional resources the Colorado regulatory program will continue to struggle to protect citizens through the enforcement of the bail bonding agent's law.

The bail bonding agent regulatory program must improve if it wishes to protect the public welfare and enforce the bail bonding agent's law. The resources devoted to this program are notably limited. Currently one insurance investigator coordinates all aspects of this program from providing information on licensing to record keeping to processing stipulations and penalties against bail bonding agents.

Adding an additional investigator should help to expedite the transfer of information to courts on bail bonding agents with suspended or revoked licenses. An additional investigator may also provide a means for the Division to physically take possession of a suspended license from a bail bonding agent. Individuals with suspended licenses by statute are not permitted to write bonds. Currently, there is no assurance that this provision of law is enforced at all. With over three hundred courts in the state, this information is only sent annually by the Division. Bail bonding agents are usually stopped when their license is due for renewal. Theoretically, a bail bonding agent could write bonds on a suspended license for eleven months before they would be stopped.

An additional investigator might also provide the Division and the Bail Bonds Advisory Committee with the extra resources needed to initiate and accomplish the citizen outreach, education and advocacy efforts recommended above (Recommendation 9). The Advisory Committee is already discussing the idea of creating a defendant's "Bill of Rights" to be issued at the time a bond is written. As mentioned in Recommendation 8, the Division should also direct resources to helping courts enhance their bond forfeiture program and procedures. Each of these justifiable needs would require the investment of such an investigator.

In general, an improved program could foster a better understanding between all parties involved with the bail bonding process, including judges, pre trial services programs, prosecutors, defense attorneys, surety insurance companies, and the Division of Insurance. Such understanding could build an informed, quality focused, and unintrusive regulatory program.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Bonding Agents Statute

12-7-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of insurance.
- (2) "Division" means the division of insurance.
- (3) "Insurer" means any domestic or foreign corporation, association, partnership, or individual engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state.
- (4) "Professional bonding agent" means any person who furnishes bail for compensation in any court or courts in this state and who is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and who is other than a full-time salaried officer or employee of an insurer or a person who pledges United States currency, a United States postal money order, a cashier's check, or other property as security for a bail bond in connection with a judicial proceeding, whether for compensation or otherwise.
- (5) Repealed.

12-7-102. License required - qualifications - enforcement. (1) No person shall act in the capacity of a professional bonding agent or perform any of the functions, duties, or powers of the same unless that person is qualified and licensed as provided in this article.

(2) No license shall be issued except in compliance with this article, and none shall be issued except to an individual. No firm, partnership, association, or corporation, as such, shall be licensed. No person engaged as a law enforcement or judicial officer shall be licensed under this article. Every applicant shall provide satisfactory evidence to the commissioner that such applicant:

- (a) Is eighteen years of age or older;
- (b) Is a resident of this state;
- (c) Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years;
- (d) Has not served a sentence upon a conviction of a felony or any crime involving moral turpitude in a correctional facility, a city or county jail, or community corrections or under the supervision of the state board of parole or any probation department within the last ten years;
- (e) Has not had a license revoked in the immediate past five years in this or any other state.

(3) The division is vested with the authority to enforce the provisions of this article. The division shall have authority to make investigations and promulgate such rules and regulations as may be necessary for the enforcement of this article.

(4) Each license issued under this article shall expire annually on January 31 unless revoked or suspended prior thereto by the division or upon notice served upon the commissioner by the insurer or the employer or user of any licensee that such insurer, employer, or user has cancelled the licensee's authority to act for or in behalf of such insurer, employer, or user.

(5) The division shall prepare and deliver to each licensee a pocket card showing the name, address, and classification of such licensee and shall certify that such person is a licensed professional bonding agent.

12-7-103. License requirements - application - qualification bond - forfeiture. (1) Any person desiring to engage in the business of professional bonding agent in this state shall apply to the division for a license on forms prepared and furnished by the division. Such application for a license or renewal thereof shall set forth, under oath, the following information:

(a) Full name, age, residence during the previous twelve months, occupation, and business address of the applicant;

(b) Repealed.

(c) Whether the applicant has been convicted of a felony or a crime involving moral turpitude during the previous ten years;

(d) Such other information including but not limited to a complete set of fingerprints certified to by an authorized law enforcement official and a full-face photograph, as may be required by this article or by the division.

(e) and (f) Repealed.

(2) Each applicant shall satisfy the division of such applicant's good moral character by furnishing references thereof.

(3) (a) Each applicant for professional bonding agent shall be required to post a qualification bond in an amount not less than fifty thousand dollars with the division. The qualification bond shall meet such specifications as may be required and approved by the division. Such bond shall be conditioned upon the full and prompt payment on any bail bond issued by such professional bonding agent into the court ordering such bond forfeited. Professional bonding agents authorized as cash bonding agents pursuant to subsection (7) of this section may only issue bonds in accordance with the provisions of section 16-4-104 (1) (b) (III), C.R.S. The bond shall be to the people of the state of Colorado in favor of any court in this state, whether municipal, county, district, or other court. Any qualification bond for a professional bonding agent shall also be to the commissioner and the division to fulfill the purposes of this section. In the event of a forfeiture of a professional bonding agent's qualification bond, the division shall have priority over all other claimants to such bond.

(b) If any bond issued by a professional bonding agent is declared forfeited, and judgment is entered thereon by a court of proper jurisdiction, and the amount of the bond is not paid within a reasonable time to be determined by the court but not to exceed ninety days, such court shall order the division to declare the qualification bond of such professional bonding agent to be forfeited after a hearing as provided in section 12-7-106 (2). The division shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by such professional bonding agent and declared forfeited by the court or the amount of the qualification bond, whichever is the smaller amount. The division shall suspend the license of such professional bonding agent until such time as all forfeitures and judgments ordered and entered against the professional bonding agent have been certified as paid or vacated by order of a court of record and another qualification bond in the required amount is posted with the division.

(4) Prior to being licensed, every person applying to practice as a professional bonding agent in this state shall pass an examination approved and adopted by the division. The passing score on such examination shall be set by the division at such level as is necessary to assure that each person passing such examination has the minimum necessary level of competency to practice as a professional bonding agent in this state. The division shall periodically update the licensure examination as necessary to ensure that all persons passing such examination have the minimum necessary level of competency to practice as professional bonding agents in this state.

(5) Upon receipt of the license application, the required fee, and an approved qualification bond in the required amount, passage of the examination, and compliance with this article, the division shall issue to the applicant a license to do business as a professional bonding agent.

(6) No licensed professional bonding agent shall employ in such bonding agent's bail bond business any person who could not qualify for a license under this article, nor shall any licensed professional bonding agent have as a partner or associate in such business any person who could not so qualify.

(7) No person can qualify to be a professional bonding agent unless such person is a licensed insurance producer appointed to represent an insurance company under article 2 of title 10, C.R.S. However, any professional bonding agent who was licensed by the division as of January 1, 1992, to write bail bonds as a cash bonding agent shall be permitted to continue such licensure upon compliance with the other requirements of this article.

12-7-104. License fees. Each license application and application for license renewal to engage in the business of professional bonding agent shall be accompanied by a fee of two hundred dollars.

12-7-104.5. Advisory committee. (1) There is hereby created an advisory committee of three persons to advise the commissioner on issues concerning bail bonds and on complaints concerning licensees and the bail bond industry. The committee shall be composed of one professional bonding agent, one attorney, and one person representing the division. The committee members shall serve without compensation but may be entitled to reimbursement for actual and necessary expenses. Appointments shall be made by the commissioner for terms of one year. Vacancies which occur during any term shall be filled by the commissioner for the remainder of such term.

(2) (a) This section is repealed, effective July 1, 1996.

(b) Prior to said repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

12-7-105. Reports and records required - professional bonding agents - division. (1) Each professional bonding agent licensed under the provisions of this article shall, under oath, report semiannually to the division on forms prescribed by the division. The reports shall be made prior to January 31 and July 31 of each year and shall contain the following detailed information for the preceding calendar year:

(a) The names of the persons for whom such professional bonding agent has become surety;

(b) The date and amount of the bonds issued by such bonding agent and the court in which such bonds were posted;

(c) The fee for each bond charged by such professional bonding agent;

(d) The amount of collateral or security received from insured principals or persons acting on behalf of such principals by such professional bonding agent on each bond;

(e) The names of all persons who are employees, partners, and associates of the professional bonding agent. Such bonding agent shall immediately report any change in the list of names to the division.

(f) Such further information as the division may require including, but not limited to, residence and business addresses, financial statements, and other business activities of the professional bonding agent.

(2) The division shall keep records as necessary of all matters pertaining to its regulation of bail bonding agents. Such records shall be kept in compliance with article 17 of title 6, C.R.S., and shall include copies of all applications, examinations, and reports filed by or completed on behalf of any bonding agent or person seeking licensure as a bonding agent; complaints regarding any facet of the bail bond industry including but not limited to complaints involving any licensee; and summaries of actions taken by the division against or on behalf of any such bonding agent.

12-7-106. Denial, suspension, revocation, and refusal to renew license - hearing - alternative civil penalty. (1) The division shall deny, suspend, revoke, or refuse to renew, as may be appropriate, the license of any person engaged in the business of professional bonding agent for any of the following reasons:

(a) Any cause for which the issuance of the license could have been refused had it then existed and been known to the division;

(b) Failure to post a qualified bond in the required amount with the division during the period such person is engaged in the business within this state or, if such bond has been posted, the forfeiture or cancellation of such bond;

(c) Material misstatement, misrepresentation, or fraud in obtaining the license;

(d) Misappropriation, conversion, or unlawful withholding of moneys belonging to insured principals or others and received in the conduct of business under the license;

(e) Fraudulent or dishonest practices in the conduct of the business under the license;

(f) Willful failure to comply with or willful violation of any provisions of this article or of any proper order, rule, or regulation of the division or any court of this state;

(g) Any activity prohibited in section 12-7-109 (1);

(h) Default in payment to the court if any bond issued by such bonding agent is forfeited by order of the court;

(i) Conviction of a felony or any crime involving moral turpitude within the last ten years, regardless of whether the conviction resulted from conduct in or conduct related to the bail bond business;

(j) Service of a sentence upon a conviction of a felony or any crime involving moral turpitude in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department within the last ten years;

(k) Revocation of a license as a professional bonding agent in the immediate past five years in this or any other state;

(l) When in the judgment of the commissioner the licensee has in the conduct of such licensee's affairs under the license demonstrated incompetency or untrustworthiness or that such licensee is no longer in good faith carrying on the bail bond business;

(m) Failure to report, to preserve without use and retain separately, or to return collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(n) Conviction of an unlawful entry into a residence by any professional bonding agent or such bonding agent's representative or employees in violation of section 16-3-201, C.R.S.;

(o) Soliciting business in or about any place where prisoners are confined, arraigned, or in custody.

(2) If the division denies, suspends, revokes, or refuses to renew any such license, the aggrieved person shall be given an opportunity for a hearing subject to judicial review as provided in article 4 of title 24, C.R.S.

(3) Except for the reasons listed in paragraphs (i) to (k) of subsection (1) of this section, the commissioner, in lieu of revoking or suspending a license, may in any one proceeding, by order, require the licensee to pay to the commissioner, to be deposited in the general fund of the state, a civil penalty in the sum of no less than three hundred dollars and no more than one thousand dollars for each offense. Upon failure of the licensee to pay the penalty within twenty days after the mailing of the order, postage prepaid, registered and addressed to the last-known place of business of the licensee, the commissioner may revoke the license of the licensee or may suspend the license for such period as the commissioner may determine, unless the commissioner's order is stayed by an order of a court of competent jurisdiction.

12-7-107. Notice to courts and surety. (1) The division shall furnish to all courts in this state, as specified in section 12-7-101 (4), the names of all professional bonding agents licensed under the provisions of this article; shall forthwith notify such courts of the suspension, revocation, or reinstatement of any bonding agent's license to engage in such business; and shall forthwith notify such courts of any surety company becoming insolvent, subject to an order for relief under the federal "Bankruptcy Reform Act of 1978", Title 11 of the United States Code, or placed in receivership. No court shall accept bond from a professional bonding agent unless such bonding agent is licensed under the provisions of this article and unless such bonding agent exhibits to such court a valid pocket card or license issued by the division, which license of such bonding agent has not been suspended or revoked.

(2) Repealed.

(3) The professional bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The professional bonding agent shall provide such list to the surety within ten days of taking the collateral. Failure to provide this written list to the surety or to keep a file of all such lists or to provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the professional bonding agent's license.

12-7-108. Maximum commission or fee. Except for a filing fee, no professional bonding agent shall charge for such bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or twenty dollars, whichever is more.

12-7-109. Prohibited activities - penalties. (1) It is unlawful for any licensee under this article to engage in any of the following activities:

(a) Specify, suggest, or advise the employment of any particular attorney to represent such licensee's principal;

(b) Pay a fee or rebate or give or promise to give anything of value to a jailer, police officer, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any of such district attorney's employees, or any person who has power to arrest or to hold any person in custody;

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond or as counsel to represent such professional bonding agent or such bonding agent's representative or employees;

(d) Pay a fee or rebate or give or promise to give anything of value to the person on whose bond such licensee is surety;

(d.5) Except for the fee received for the bond, to fail to return any collateral or security within ten working days after receipt of a copy of the court order that results in a release of the bond by the court. A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written.

(e) Accept anything of value from a person on whose bond such licensee is surety or from others on behalf of such person except the fee or premium on the bond, but the professional bonding agent may accept collateral security or other indemnity if:

(I) No collateral or security in tangible property is taken by pledge or debt instrument which allows retention, sale, or other disposition of such property upon default except in accordance with the provisions of article 9 of title 4, C.R.S.;

(II) No collateral or security interest in real property is taken by deed or any other instrument unless the professional bonding agent's interest in the property is limited to the amount of the bond;

(III) The collateral or security taken by the professional bonding agent is not pledged directly to any court as security for any appearance bond; and

(IV) The person from whom the collateral or security is taken is issued a receipt describing the condition of the collateral at the time it is taken into the custody of the professional bonding agent;

(f) Coerce, suggest, aid and abet, offer promise of favor, or threaten any person on whose bond such licensee is surety or offers to become surety to induce that person to commit any crime;

(g) Act as a professional bonding agent in any court of record in this state if such licensee is in default in securing any person's bond;

(h) Fail to apprise the court of known inaccuracies in any property value schedules of security being pledged directly under the provisions of section 16-4-104, C.R.S., to any court in this state in combination with a bond underwritten by the professional bonding agent;

(i) Pledge, or knowingly allow to be pledged, without informing the court, any property in any court in securance of appearance during any period where such property is currently pledged for another appearance bond;

(j) Post bond in any amount in the name of a corporate surety without authorization from the corporate surety;

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the professional bonding agent may accept collateral security or other indemnity from the person on whose bond such bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The professional bonding agent shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a professional bonding agent accepts collateral as security pursuant to this paragraph (k), such bonding agent shall give a written receipt for such collateral to the person on whose bond such bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a professional bonding agent or such bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section 12-7-103 (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(l) Sign or countersign blank bail bonds or execute a power of attorney or otherwise authorize anyone to countersign such licensee's name to bonds;

(m) For any one licensee to have more than one bond posted at any one time and, in any single case, on behalf of any one person;

(n) Fail to issue to the person from whom collateral or security is taken a receipt which includes a description of the collateral or security at the time it is taken into the custody of the professional bonding agent.

(2) Any licensee who violates any provision of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) Any person who acts or attempts to act as a professional bonding agent and who is not licensed as such under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

12-7-110. Penalty for violation of bond conditions. (Repealed)

12-7-111. Tax on fees charged. Each professional bonding agent who furnishes bail in a form other than in the form of the bail bond of an insurer shall pay to the division a tax on the fees charged for bail by such professional bonding agent. Such tax shall be the same as the tax levied on insurance companies by section 10-3-209 (1), C.R.S., and all applicable provisions of such section shall be applied to such professional bonding agent in the same manner, amounts, and procedure as they are applied to insurance companies in such section.

12-7-112. Repeal - review of functions. This article is repealed, effective July 1, 1996. Prior to such repeal, the licensing functions of the commissioner and the division shall be reviewed as provided for in section 24-34-104, C.R.S.

1995

SENATE BILL 95-097

BY SENATORS Perlmutter, Casey, and Wattenberg;
also REPRESENTATIVE Adkins.

CONCERNING THE LICENSURE REQUIREMENTS FOR PERSONS ISSUING BAIL BONDS, AND, IN CONNECTION THEREWITH, THE BONDING REQUIREMENTS FOR SUCH AGENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-7-101, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "BAIL BONDING AGENT" OR "BONDING AGENT" MEANS ANY PERSON WHO FURNISHES BAIL FOR COMPENSATION IN ANY COURT OR COURTS IN THIS STATE AND WHO IS APPOINTED BY AN INSURER BY POWER OF ATTORNEY TO EXECUTE OR COUNTERSIGN BAIL BONDS IN CONNECTION WITH JUDICIAL PROCEEDINGS AND WHO IS OTHER THAN A FULL-TIME SALARIED OFFICER OR EMPLOYEE OF AN INSURER OR A PERSON WHO PLEDGES UNITED STATES CURRENCY, A UNITED STATES POSTAL MONEY ORDER, A CASHIER'S CHECK, OR OTHER PROPERTY AS SECURITY FOR A BAIL BOND IN CONNECTION WITH A JUDICIAL PROCEEDING, WHETHER FOR COMPENSATION OR OTHERWISE.

~~—(1)~~ (2) "Commissioner" means the commissioner of insurance.

~~(2)~~ (3) "Division" means the division of insurance.

~~(3)~~ (4) "Insurer" means any domestic or foreign corporation, association, partnership, or individual engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state.

~~(4) "Professional bonding agent" means any person who furnishes bail for compensation in any court or courts in this state and who is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and who is other than a full-time salaried officer or employee of an insurer or a person who pledges United States currency, a United States postal money order, a cashier's check, or other property as security for a bail bond in connection with a judicial proceeding, whether for compensation or otherwise.~~

(5) Repealed.

SECTION 2. 12-7-102 (2) and (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-7-102. License required - qualifications - enforcement. (2) No license shall be issued except in compliance with this article, and none shall be issued except to an individual. No firm, partnership, association, or corporation, as such, shall be licensed. No person engaged as a law enforcement or judicial officer shall be licensed under this article. Every applicant FOR INITIAL LICENSURE UNDER THIS ARTICLE shall provide satisfactory evidence to the commissioner that such applicant HAS:

(a) ~~Is eighteen years of age or older;~~ COMPLIED WITH THE REQUIREMENTS STATED IN SECTION 10-2-404 (1) AND (3), C.R.S.; AND

(b) ~~Is a resident of this state;~~ NOT COMMITTED OR ENGAGED IN AN ACT DESCRIBED IN SECTION 12-7-106 (1).

(c) ~~Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years;~~

(d) ~~Has not served a sentence upon a conviction of a felony or any crime involving moral turpitude in a correctional facility, a city or county jail, or community corrections or under the supervision of the state board of parole or any probation department within the last ten years;~~

(e) ~~Has not had a license revoked in the immediate past five years in this or any other state.~~

(4) Each license issued under this article shall expire annually on ~~January 31~~ JANUARY 1 unless revoked or suspended prior thereto by the division or upon notice served upon the commissioner by the insurer or the employer or user of any licensee that such insurer, employer, or user has cancelled the licensee's authority to act for or in behalf of such insurer, employer, or user.

SECTION 3. 12-7-103, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-103. License requirements - application - qualification bond - forfeiture. (1) Any person desiring to engage in the business of ~~professional~~ BAIL bonding agent in this state shall apply to the division for a license on forms prepared and furnished by the division. Such application for a license or renewal thereof shall set forth, under oath, the following information:

(a) Full name, age, residence during the previous twelve months, occupation, and business address of the applicant;

(b) Repealed.

(c) Whether the applicant has been convicted of a felony or a ~~crime involving moral turpitude~~ ENGAGED IN OR COMMITTED AN ACT DESCRIBED IN SECTION 12-7-106 (1), during the previous ten years;

(d) Such other information including but not limited to a complete set of fingerprints certified to by an authorized law enforcement official and a full-face photograph, as may be required by this article or by the division.

(e) and (f) Repealed.

(2) Each applicant shall satisfy the division of such applicant's good moral character by furnishing references thereof.

(3) (a) Each applicant for ~~professional~~ BAIL bonding agent shall be required to post a qualification bond in an amount not less than fifty thousand dollars with the division. The qualification bond shall meet such specifications as may be required and approved by the division. Such bond shall be conditioned upon the full and prompt payment on any bail bond issued by such professional bonding agent into the court ordering such bond forfeited. ~~Professional~~ BAIL bonding agents authorized as cash bonding agents pursuant to subsection (7) of this section may only issue bonds in accordance with the provisions of section 16-4-104 (1) (b) (III), C.R.S. The bond shall be to the people of the state of Colorado in favor of any court in this state, whether municipal, county, district, or other court. Any qualification bond for a ~~professional~~ BAIL bonding agent shall also be to the commissioner and the division to fulfill the purposes of this section. In the event of a forfeiture of a ~~professional~~ BAIL bonding agent's qualification bond, the division shall have priority over all other claimants to such bond.

(b) If any bond issued by a ~~professional~~ BAIL bonding agent is declared forfeited, and judgment is entered thereon by a court of proper jurisdiction, and the amount of the bond is not paid within a reasonable time to be determined by the court but not to exceed ninety days, such court shall order the division to declare the qualification bond of such ~~professional~~ BAIL bonding agent to be forfeited after a hearing as provided in section 12-7-106 (2). The division shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by such ~~professional~~ BAIL bonding agent and declared forfeited by the court or the amount of the qualification bond, whichever is the smaller amount. The division shall suspend the license of such ~~professional~~ BAIL bonding agent until such time as all forfeitures and judgments ordered and entered against the ~~professional~~ BAIL bonding agent have been certified as paid or vacated by order of a court of record and another qualification bond in the required amount is posted with the division.

(4) Prior to being licensed, every person applying to practice as a ~~professional~~ BAIL bonding agent in this state shall pass an examination approved and adopted by the division. The passing score on such examination shall be set by the division at such level as is necessary to assure that each person passing such examination has the minimum necessary level of competency to practice as a ~~professional~~ BAIL bonding agent in this state. The division shall periodically update the licensure examination as necessary to ensure that all persons passing such examination have the minimum necessary level of competency to practice as ~~professional~~ BAIL bonding agents in this state.

(5) Upon receipt of the license application, the required fee, and an approved qualification bond in the required amount, passage of the examination, and compliance with this article, the division shall issue to the applicant a license to do business as a ~~professional~~ BAIL bonding agent.

(6) No licensed ~~professional~~ BAIL bonding agent shall employ in such bonding agent's bail bond business any person who could not qualify for a license under this article, nor shall any licensed ~~professional~~ BAIL bonding agent have as a partner or associate in such business any person who could not so qualify.

(7) No person can qualify to be a ~~professional~~ BAIL bonding agent unless such person is a licensed insurance producer appointed to represent an insurance company under article 2 of title 10, C.R.S. However, any ~~professional~~ BAIL bonding agent who was licensed by the division as of January 1, 1992, to write bail bonds as a cash bonding agent shall be permitted to continue such licensure upon compliance with the other requirements of this article.

SECTION 4. Article 7 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-7-102.5. Prelicensure education requirements - exemptions. (1) AS A CONDITION OF INITIAL LICENSURE UNDER THIS ARTICLE, THE COMMISSIONER SHALL REQUIRE EACH APPLICANT TO SUBMIT EVIDENCE OF SATISFACTORY COMPLETION OF AN APPROVED PRELICENSURE EDUCATION OR TRAINING COURSE. SUCH EDUCATION OR TRAINING SHALL CONSIST OF AT LEAST EIGHT CLOCK HOURS, TWO OF WHICH SHALL CONCERN THE CRIMINAL COURT SYSTEM, TWO OF WHICH SHALL CONCERN BAIL BOND INDUSTRY ETHICS, AND FOUR OF WHICH SHALL CONCERN THE LAWS RELATING TO BAIL BONDS.

(2) PRELICENSURE EDUCATION REQUIREMENTS SHALL NOT APPLY TO A PERSON APPLYING FOR:

(a) REINSTATEMENT OF A CANCELLED OR EXPIRED BAIL BONDING AGENT LICENSE, IF SUCH LICENSE HAS BEEN INACTIVE FOR ONE YEAR OR LESS; OR

(b) A LICENSE ISSUED UNDER THIS ARTICLE, IF SUCH PERSON HAS BEEN LICENSED IN ANOTHER STATE FOR AT LEAST ONE YEAR AND HAS COMPLETED OR SATISFIED PRELICENSURE REQUIREMENTS WHICH ARE SUBSTANTIALLY SIMILAR TO THOSE STATED IN SUBSECTION (1) OF THIS SECTION.

(3) PRELICENSURE EDUCATION COURSES SHALL BE CERTIFIED, REGISTERED, AND REVIEWED BY THE COMMISSIONER PURSUANT TO SECTION 10-2-203.

(4) AN INDIVIDUAL APPLYING FOR A LICENSE UNDER THIS ARTICLE SHALL PAY TO THE COMMISSIONER, IN ADDITION TO ANY OTHER APPLICABLE FEES OR CHARGES, A FEE ESTABLISHED BY THE COMMISSIONER FOR THE OPERATION OF THE PRELICENSURE EDUCATION PROGRAM.

(5) THE COMMISSIONER SHALL ADOPT ALL RULES NECESSARY TO ADMINISTER THE PRELICENSURE EDUCATION REQUIREMENTS OF THIS SECTION. SUCH RULES SHALL SET FORTH THE STANDARDS BY WHICH COURSES AND PROGRAMS SHALL QUALIFY FOR APPROVAL AND SHALL DESCRIBE A SYSTEM OF CONTROL AND REPORTING.

12-7-103.5. Continuing education requirement. (1) A BAIL BONDING AGENT LICENSED UNDER THIS ARTICLE SHALL SATISFACTORILY COMPLETE AT LEAST SIX CLOCK HOURS OF INSTRUCTION EVERY TWO YEARS BY ATTENDING COURSES OR PROGRAMS OF INSTRUCTION THAT HAVE BEEN APPROVED BY THE COMMISSIONER. TWO CLOCK HOURS OF SUCH INSTRUCTION SHALL CONCERN BAIL BOND INDUSTRY ETHICS. THE COMMISSIONER MAY ADOPT RULES CONCERNING TESTS THAT RELATE TO SUCH CONTINUING EDUCATION REQUIREMENTS.

(2) (a) A BAIL BONDING AGENT LICENSED BEFORE JANUARY 1, 1995, SHALL COMPLETE AT LEAST SIX CLOCK HOURS OF CONTINUING EDUCATION AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION BY DECEMBER 31, 1997, AND AN ADDITIONAL SIX CLOCK HOURS OF SUCH CONTINUING EDUCATION EVERY TWO YEARS THEREAFTER.

(b) A BAIL BONDING AGENT LICENSED ON OR AFTER JANUARY 1, 1995, SHALL COMPLETE AT LEAST SIX CLOCK HOURS OF CONTINUING EDUCATION AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION BY DECEMBER 31 OF THE SECOND FULL CALENDAR YEAR AFTER INITIAL LICENSURE AND AN ADDITIONAL SIX CLOCK HOURS OF SUCH CONTINUING EDUCATION EVERY TWO YEARS THEREAFTER.

(c) FOR GOOD CAUSE SHOWN, THE COMMISSIONER MAY GRANT AN EXTENSION OF TIME, NOT TO EXCEED ONE YEAR, WITHIN WHICH AN APPLICANT MAY COMPLY WITH THIS SECTION.

(d) AN INSTRUCTOR OF AN APPROVED COURSE OF INSTRUCTION SHALL QUALIFY FOR THE SAME NUMBER OF CLOCK HOURS OF CONTINUING EDUCATION AS A PERSON ATTENDING AND SUCCESSFULLY COMPLETING THE COURSE OR PROGRAM, BUT SHALL NOT RECEIVE CREDIT MORE THAN ONCE FOR A COURSE OR PROGRAM GIVEN MORE THAN ONCE DURING A TWO-YEAR PERIOD.

(3) A BAIL BONDING AGENT LICENSED UNDER THIS ARTICLE SHALL FURNISH WRITTEN PROOF OF COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION, IN A FORM SATISFACTORY TO THE COMMISSIONER.

(4) AN ORGANIZATION SPONSORING A COURSE OF CONTINUING EDUCATION, OR A PERSON ACTING ON ITS BEHALF, SHALL EXECUTE WRITTEN CERTIFICATION THAT A COURSE OF INSTRUCTION HAS BEEN COMPLETED. SUCH CERTIFICATION SHALL BE IN A FORM SATISFACTORY TO THE COMMISSIONER.

(5) A BAIL BONDING AGENT LICENSED UNDER THIS ARTICLE WHO FAILS TO COMPLY WITH THIS SECTION, OR IS FOUND AFTER NOTICE AND THE OPPORTUNITY FOR HEARING TO HAVE SUBMITTED A FALSE OR FRAUDULENT CERTIFICATE OF COMPLIANCE, SHALL HAVE HIS OR HER LICENSE SUSPENDED UNTIL SUCH PERSON SATISFACTORILY DEMONSTRATES TO THE COMMISSIONER THAT ALL OF THE REQUIREMENTS OF THIS SECTION HAVE BEEN MET.

(6) SECTION 10-2-301 (6) AND (7), C.R.S., SHALL APPLY WITH RESPECT TO THE ADMINISTRATION OF THE CONTINUING EDUCATION REQUIREMENTS FOR BAIL BONDING AGENTS LICENSED UNDER THIS ARTICLE.

(7) THIS SECTION SHALL NOT APPLY TO ANY BAIL BONDING AGENT WHO WAS LICENSED BY THE DIVISION AS OF JANUARY 1, 1992, TO WRITE BAIL BONDS AS A CASH BONDING AGENT.

(8) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2000.

SECTION 5. 12-7-104, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-104. License fees. Each license application and application for license renewal to engage in the business of ~~professional~~ BAIL bonding agent shall be accompanied by a fee of two hundred dollars.

SECTION 6. 12-7-104.5 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-104.5. Advisory committee. (1) There is hereby created an advisory committee of ~~three~~ FOUR persons to advise the commissioner on issues concerning bail bonds and on complaints concerning licensees and the bail bond industry. The committee shall be composed of one ~~professional~~ BAIL bonding agent LICENSED UNDER THIS ARTICLE, one attorney, ~~and~~ one person representing the division, AND ONE COMPANY REPRESENTATIVE. The committee members shall serve without compensation but may be entitled to reimbursement for actual and necessary expenses. Appointments shall be made by the commissioner for terms of one year. Vacancies which occur during any term shall be filled by the commissioner for the remainder of such term. THE ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS TO THE COMMISSIONER WITH RESPECT TO THE REQUIREMENT FOR CONTINUING EDUCATION AND THE STANDARDS FOR QUALIFYING COURSES AND PROGRAMS FOR CERTIFICATION FOR BAIL BONDING AGENTS LICENSED UNDER THIS ARTICLE.

SECTION 7. 12-7-105 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-105. Reports and records required - professional bonding agents - division. (1) Each ~~professional~~ BAIL bonding agent licensed under the provisions of this article shall, under oath, report semiannually to the division on forms prescribed by the division. The reports shall be ~~made~~ FILED WITH THE DIVISION prior to January 31 and July 31 of each year and shall contain the following detailed information for the preceding calendar year:

(a) The names of the persons for whom such ~~professional~~ BAIL bonding agent has become surety;

(b) The date and amount of the bonds issued by such bonding agent and the court in which such bonds were posted;

(c) The fee for each bond charged by such ~~professional~~ BAIL bonding agent;

(d) The amount of collateral or security received from insured principals or persons acting on behalf of such principals by such ~~professional~~ BAIL bonding agent on each bond;

(e) The names of all persons who are employees, partners, and associates of the ~~professional~~ BAIL bonding agent. Such bonding agent shall immediately report any change in the list of names to the division.

(f) Such further information as the division may require including, but not limited to, residence and business addresses, financial statements, and other business activities of the ~~professional~~ BAIL bonding agent.

SECTION 8. The introductory portion to 12-7-106 (1) and 12-7-106 (1) (k) and (1) (n), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended, and the said 12-7-106 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-7-106. Denial, suspension, revocation, and refusal to renew license - hearing - alternative civil penalty. (1) The division shall deny, suspend, revoke, or refuse to renew, as may be appropriate, the license of any person engaged in the business of ~~professional~~ BAIL bonding agent for any of the following reasons:

(k) Revocation of a license as a ~~professional~~ BAIL bonding agent in the immediate past five years in this or any other state;

(n) Conviction of an unlawful entry into a residence by any ~~professional~~ BAIL bonding agent or such bonding agent's representative or employees in violation of section 16-3-201, C.R.S.;

(p) FAILURE TO PAY A FINAL, NONAPPEALABLE JUDGMENT AWARD FOR FAILURE TO RETURN OR REPAY COLLATERAL RECEIVED TO SECURE A BOND.

SECTION 9. 12-7-107 (1) and (3), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-7-107. Notice to courts and surety. (1) The division shall furnish to all courts in this state, as specified in section 12-7-101 ~~(4)~~, (1), the names of all ~~professional~~ BAIL bonding agents licensed under the provisions of this article; shall forthwith notify such courts of the suspension, revocation, or reinstatement of any BAIL bonding agent's license to engage in such business; and shall forthwith notify such courts of any surety company becoming insolvent, subject to an order for relief under the federal "Bankruptcy Reform Act of 1978", Title 11 of the United States Code, or placed in receivership. No court shall accept bond from a ~~professional~~ BAIL bonding agent unless such bonding agent is licensed under the provisions of this article and unless such BAIL bonding agent exhibits to such court a valid pocket card or license issued by the division, which license of such bonding agent has not been suspended or revoked.

(3) The ~~professional~~ BAIL bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The ~~professional~~ BAIL bonding agent shall provide such list to the surety within ten days of taking the collateral. Failure to provide this written list to the surety or to keep a file of all such lists or to provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the ~~professional~~ BAIL bonding agent's license.

SECTION 10. 12-7-108, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-108. Bonding agreement - requirements - payment schedule.

(1) A BONDING AGREEMENT SHALL BE IN WRITING AND SIGNED BY THE BAIL BONDING AGENT AND THE PRINCIPAL. IF THE PRINCIPAL IS ILLITERATE OR DOES NOT READ THE ENGLISH LANGUAGE, SUCH BAIL BONDING AGENT SHALL NOTE ON THE AGREEMENT THAT HE OR SHE OR A THIRD PARTY HAS READ OR TRANSLATED THE BONDING AGREEMENT TO THE PRINCIPAL, AND A COPY OF THE TRANSLATION SHALL BE ATTACHED TO THE AGREEMENT.

(2) Except for a BOND filing fee FEES CHARGED BY A COURT OR LAW ENFORCEMENT AGENCY AND THE ACTUAL COST OF STORING COLLATERAL IN A SECURE, SELF-SERVICE PUBLIC STORAGE FACILITY, no ~~professional~~ BAIL bonding agent LICENSED UNDER THIS ARTICLE shall charge for such BAIL bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or twenty dollars, whichever is more.

(3) AN ARRANGEMENT FOR THE PAYMENT OF ALL OR PART OF THE PREMIUM, COMMISSION, OR FEE PAID TO A BAIL BONDING AGENT LICENSED UNDER THIS ARTICLE SHALL BE IN WRITING AND SHALL SET FORTH THE SCHEDULE OF SUCH PAYMENTS.

SECTION 11. 12-7-109 (1) (c), (1) (e), (1) (g), (1) (h), (1) (j), (1) (k), (1) (n), and (3), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended, and the said 12-7-109 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-7-109. Prohibited activities - penalties. (1) It is unlawful for any licensee under this article to engage in any of the following activities:

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond or as counsel to represent such ~~professional~~ BAIL bonding agent or such bonding agent's representative or employees;

(e) Accept anything of value from a person on whose bond such licensee is surety or from others on behalf of such person except the fee or premium on the bond, but the ~~professional~~ BAIL bonding agent may accept collateral security or other indemnity if:

(I) No collateral or security in tangible property is taken by pledge or debt instrument which allows retention, sale, or other disposition of such property upon default except in accordance with the provisions of article 9 of title 4, C.R.S.;

(II) No collateral or security interest in real property is taken by deed or any other instrument unless the ~~professional~~ BAIL bonding agent's interest in the property is limited to the amount of the bond;

(III) The collateral or security taken by the ~~professional~~ BAIL bonding agent is not pledged directly to any court as security for any appearance bond; and

(IV) The person from whom the collateral or security is taken is issued a receipt describing the condition of the collateral at the time it is taken into the custody of the ~~professional~~ BAIL bonding agent;

(g) Act as a ~~professional~~ BAIL bonding agent in any court of record in this state if such licensee is in default in securing any person's bond;

(h) Fail to apprise the court of known inaccuracies in any property value schedules of security being pledged directly under the provisions of section 16-4-104, C.R.S., to any court in this state in combination with a bond underwritten by the ~~professional~~ BAIL bonding agent;

(j) Post bond in any amount in the name of a corporate surety:

(I) Without authorization from the corporate surety; OR

(II) AFTER THE WITHDRAWAL OF AUTHORIZATION BY THE CORPORATE SURETY BY SUCH SURETY PROVIDING NOTICE IN WRITING, BY CERTIFIED MAIL, SENT TO THE LAST KNOWN BUSINESS ADDRESS OF THE LICENSEE;

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the ~~professional~~ BAIL bonding agent LICENSED UNDER THIS ARTICLE may accept collateral security or other indemnity from the person on whose bond such BAIL bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The ~~professional~~ BAIL bonding agent LICENSED UNDER THIS ARTICLE shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a ~~professional~~ BAIL bonding agent accepts collateral as security pursuant to this paragraph (k), such BAIL bonding agent shall give a written receipt for such collateral to the person on whose bond such BAIL bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a ~~professional~~ BAIL bonding agent or such BAIL bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the

return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section 12-7-103 (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. THE COMMISSIONER SHALL FORFEIT A QUALIFICATION BOND IN THE AMOUNT NECESSARY TO PAY ANY FINAL, NONAPPEALABLE JUDGMENT AWARD FOR FAILURE TO RETURN COLLATERAL, INCLUDING COSTS AND ATTORNEY'S FEES, IF AWARDED.

(n) Fail to issue to the person from whom collateral or security is taken a receipt which includes a description of the collateral or security at the time it is taken into the custody of the ~~professional~~ BAIL bonding agent;

(o) FAILURE TO POST A BOND WITHIN TWENTY-FOUR HOURS OF RECEIPT OF FULL PAYMENT OR A SIGNED CONTRACT FOR PAYMENT, OR IF THE BOND IS NOT POSTED WITHIN TWENTY-FOUR HOURS OF RECEIPT OF FULL PAYMENT OR A SIGNED CONTRACT FOR PAYMENT, FAILURE TO REFUND ALL MONEYS RECEIVED, RELEASE ALL LIENS, AND RETURN ALL COLLATERAL WITHIN FORTY-EIGHT HOURS OF RECEIPT OF SUCH PAYMENT OR CONTRACT.

(3) Any person who acts or attempts to act as a ~~professional~~ BAIL bonding agent and who is not licensed as such under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

SECTION 12. 12-7-111, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-111. Tax on fees charged. Each ~~professional~~ BAIL bonding agent who furnishes bail in a form other than in the form of the bail bond of an insurer shall pay to the division a tax on the fees charged for bail by such ~~professional~~ BAIL bonding agent. Such tax shall be the same as the tax levied on insurance companies by section 10-3-209 (1), C.R.S., and all applicable provisions of such section shall be applied to such ~~professional~~ BAIL bonding agent in the same manner, amounts, and procedure as they are applied to insurance companies in such section.

SECTION 13. 10-2-301 (6) (a) and (6) (c), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

10-2-301. Continuing education requirement - advisory committee.

(6) (a) The commissioner shall be responsible for administering the continuing insurance education requirements UNDER THIS ARTICLE AND THE CONTINUING EDUCATION REQUIREMENTS UNDER ARTICLE 7 OF TITLE 12, C.R.S., and approving courses of instruction which qualify for such purposes. The commissioner shall promulgate such rules and regulations as ~~the~~ THE COMMISSIONER deems necessary to administer ~~the~~ SUCH continuing insurance education requirements, including the provisions and requirements of this section. The commissioner shall also promulgate regulations requiring that producers AND BAIL BONDING AGENTS LICENSED UNDER ARTICLE 7 OF TITLE 12, C.R.S., be required to provide to a continuing education administrator proof of compliance with the continuing education requirements as a condition of license renewal. For persons licensed pursuant to section 10-11-116 (1) (c), ~~C.R.S.~~, compliance with the continuing legal education credits requirements of the Colorado supreme court shall be deemed to meet the requirements of this section.

(c) Each producer BAIL BONDING AGENT LICENSED UNDER ARTICLE 7 OF TITLE 12, C.R.S., shall be responsible for paying to the continuing education administrator a reasonable biennial fee for the operation of the continuing insurance education ~~program~~ PROGRAMS, which fee shall be used to administer the provisions of this section.

SECTION 14. The introductory portion to 16-4-104 (1) and 16-4-104 (1) (b) (III), (3) (a) (I), (3) (a) (III), and (3) (a) (V), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

16-4-104. Bail bond - alternatives. (1) When the amount of bail is fixed by the judge of a court of record, ~~he~~ THE JUDGE shall also determine which of the following kinds of bond shall be required for the pretrial release of the defendant:

(b) The defendant may be released from custody upon execution of bond in the full amount of the bail to be secured in any one or more, or any combination of, the following ways:

(III) By sureties worth at least one and one-half the amount of bail set in the bond or by a ~~professional~~ BAIL bonding agent as defined in section 12-7-101 ~~(4)~~, (1), C.R.S.

(3) (a) (I) If the bond is to be secured by real estate, the ~~professional~~ BAIL bonding agent shall provide the property owner with a written disclosure statement in the following form at the time an initial application is filed:

"Disclosure of lien against real property

Do not sign this document until you read and understand it! This bail bond will be secured by real property you own or in which you have an interest. Failure to

pay the bail bond premiums when due or the defendant's failure to comply with the conditions of bail could result in the loss of your property!"

(III) Before a property owner executes any instrument creating a lien against real property, the ~~professional~~ BAIL bonding agent shall provide the property owner with a completed copy of the instrument creating the lien against real property and the disclosure statement described in subparagraph (II) of this paragraph (a). If a ~~professional~~ BAIL bonding agent fails to comply fully with the requirements of subparagraphs (I) and (II) of this paragraph (a) and this subparagraph (III), any instrument creating a lien against real property shall be voidable.

(V) Any ~~professional~~ BAIL bonding agent who violates this paragraph (a) shall be liable to the property owner for all damages which may be sustained by reason of the violation, plus statutory damages in the sum of three hundred dollars. The property owner shall be entitled to recover court costs and reasonable attorney fees, as determined by the court, upon prevailing in any action brought to enforce the provisions of this paragraph (a).

SECTION 15. Effective date. This act shall take effect July 1, 1995.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Tom Norton	Charles E. Berry
PRESIDENT OF	SPEAKER OF THE HOUSE
THE SENATE	OF REPRESENTATIVES

Joan M. Albi	Judith M. Rodrigue
SECRETARY OF	CHIEF CLERK OF THE HOUSE
THE SENATE	OF REPRESENTATIVES

APPROVED _____

Roy Romer
GOVERNOR OF THE STATE OF COLORADO