



**Dora**  
Department of Regulatory Agencies

Office of Policy, Research, and Regulatory Reform

**2011 Sunset Review:  
Bail Bonding Agents  
and  
The Bail Bond Advisory Committee**

October 14, 2011





## Executive Director's Office

Barbara J. Kelley  
Executive Director

John W. Hickenlooper  
Governor

October 14, 2011

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the regulation of bail bonding agents and the Bail Bond Advisory Committee. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2012 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), 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 supporting materials to the office of legislative legal services no later than October 15 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 of Insurance and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





John W. Hickenlooper  
Governor

Barbara J. Kelley  
Executive Director

## **2011 Sunset Review: Bail Bonding Agents and the Bail Bond Advisory Committee**

### **Summary**

#### ***What Is Regulated?***

Courts set bail so that defendants can be released from jail with some assurance that they will, in the future, appear in court as required. A commercial bail bond is a contract between a bail agent and an indemnitor to secure the release of a defendant from jail. Rather than pay the full amount of the court-established bail, the indemnitor pays the bail agent a portion of that amount. As a licensed bail agent, the bail agent simply guarantees the court that the defendant will appear as required. Failure to so appear renders the bail agent liable to the court for the full amount of the bail.

All licensed bail agents are also licensed insurance producers, and there are three types: bail bonding agents (BBAs), professional cash bail agents (PCBAs) and cash bail agents (CBAs).

A BBA is appointed by an insurance company to execute bail bonds.

A PCBA is not an appointed producer for an insurance company. Rather, a PCBA must post a \$50,000 qualification bond to act as surety for bail. A PCBA may not furnish any single bail bond worth more than twice the amount of the qualification bond and must have been licensed as a BBA for four years prior to application for a PCBA license.

A CBA, also, is not an appointed producer for an insurance company. A CBA must also post a qualification bond worth \$50,000. However, there are no limits placed on the amount of a single bond.

#### ***Why Is It Regulated?***

Bail bonds are generally complex financial transactions and alleged criminal activity is involved at the outset. As a result, one or more of the parties in a transaction could be harmed.

#### ***Who Is Regulated?***

In 2009, the Division of Insurance (DOI) licensed 531 BBAs, 36 PCBAs, and 4 CBAs. Approximately 80 percent of those licensees actively wrote bail bonds in the state during that year.

#### ***How Is It Regulated?***

A license applicant must satisfy the same education and examination requirements as other insurance producers, and must also be a Colorado resident; be at least 18 years old; not have been convicted of, or completed parole, probation, or a deferred sentence for a felony within the last 10 years; and be trustworthy, competent, financially responsible, and of good personal and business reputation.

#### ***What Does It Cost?***

The DOI does not segregate labor and monetary expenditures by individual lines of insurance such as bail. During fiscal year 09-10, the DOI employed roughly 85 full-time equivalent employees and had approximately \$9.8 million in total expenditures.

#### ***What Disciplinary Activity Is There?***

During fiscal years 05-06 through 09-10, the DOI received an average of 272 complaints annually resulting in an average of 158 disciplinary actions.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### **Continue the regulation of bail agents for five years, until 2017.**

Given Colorado's regulatory and marketplace circumstances, regulation of bail agents by the DOI is essential to protecting public health, safety, and welfare. During the time examined for this sunset review, the DOI revoked or suspended roughly 1 out of every 20 active bail agent licenses because of misconduct. Also, approximately one-quarter to one-half of all licensees faced disciplinary action in each fiscal year. Such high ratios vividly illustrate that regulatory oversight is needed.

### **Create a license for bail bonding agencies.**

Currently, the Bail Act prohibits the licensing of agencies, a prohibition that does not exist for other lines of insurance. Recent market conduct examinations revealed multiple problems related to the way in which BBAs and the insurance companies that appoint them interact. Compliance and accountability were identified as structural problems in this segment of the industry. Removing the prohibition on the licensing of bail bonding agencies will allow for greater industry oversight of the day-to-day operations of individual BBAs.

### **Continue the Bail Bond Advisory Committee for five years until 2017, change its membership, and assign it new duties.**

The sunset report recommends numerous changes to the Bail Act. As a result, the Bail Bond Advisory Committee could become an invaluable part of the transition into the new regulatory environment. If its membership and mission are revised, it can help steer both the DOI and the regulated community through the changes that are on the horizon for the industry.

## Major Contacts Made During This Review

Arapahoe County Justice Planning  
California Department of Insurance  
Colorado Association of Chiefs of Police  
Colorado Commercial Bail Insurance Company Round Table  
Colorado Criminal Defense Bar  
Colorado Division of Insurance  
Colorado Judicial Department  
Colorado State Public Defender  
Jefferson County Criminal Justice Planning  
Larimer County Community Corrections  
Larimer County Division of Criminal Justice Services  
Larimer County Sherriff's Department  
Minnesota Department of Commerce  
Professional Bail Agents of Colorado  
Rocky Mountain Bail Association  
Utah Insurance Department

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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## Background

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### *Introduction*

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies' Office of Policy, Research and Regulatory Reform conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## ***Types of Regulation***

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The regulatory functions of the Commissioner of Insurance and the Division of Insurance (Commissioner and DOI, respectively) as enumerated in Article 7 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2012, and the Bail Bond Advisory Committee created in section 12-7-104.5, C.R.S., shall be terminated on July 1, 2013, unless continued by the General Assembly. During the year prior to these dates, it is the duty of DORA to conduct an analysis and evaluation of the administration of the bail agent licensing program by the Commissioner pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of bail agents should be continued for the protection of the public and to evaluate the performance of the Commissioner and the DOI. During this review, the Commissioner and the DOI must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

### **Methodology**

As part of this review, DORA staff attended Bail Bond Advisory Committee and Colorado Commercial Bail Insurance Company Round Table meetings; interviewed the Commissioner and DOI staff; reviewed DOI records including complaint and disciplinary actions; interviewed officials with state and national professional associations, individual licensees in each license category, and insurers; surveyed licensees; reviewed Colorado statutes and DOI rules; and reviewed other states' laws.

### **Profile of the Profession**

The Eighth Amendment to the U.S. Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." It is tied to a presumption of innocence not explicit in the U.S. Constitution but implied by the Fourth and Sixth Amendments. The Colorado Constitution follows suit by stating that people have a right to bail except in cases of violent crimes when, "proof is evident or presumption is great."<sup>2</sup>

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<sup>2</sup> Article II § 19(1), Colorado Constitution.

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When a person gets arrested, in most cases the court will set a bond in an amount that it believes is sufficient to protect the public and guarantee that the defendant will appear for a future hearing. Colorado employs two bond systems: one commercial and one public.

A commercial bail bond is a contract between a bail agent and an indemnitor to secure the release of a person from jail. The service is necessary for those who choose to not post the whole amount of the bond set by the court. For this service, the bail agent charges a premium. Colorado law permits premium charges of up to 15 percent of the full bail amount. For example, if a bond is set by the court for \$1,000, a bail agent may be retained for a nonrefundable \$150 premium. In exchange for that premium, the agent guarantees the court that the defendant will show for scheduled appearances or pay the full amount of the bond, \$1,000, to the court.

The bail agent may demand collateral, such as personal or real property, as security on the bond from the person who guarantees the bond (indemnitor). Failure of the defendant to appear in court may result in a warrant issued for the defendant's arrest, the bail bond forfeited, and subsequently, the collateral being liquidated. If the defendant is located and returned to custody, the bond indemnitor is responsible for all expenses incurred by the agent while trying to "recover" the fugitive. There is no limit on expenses for bail recovery or requirement that the bail agent itemize the bail recovery expenses.

Colorado licenses two general categories of bail agents: 1) those who are backed by their own cash, known as cash bail agents (CBAs) and professional cash bail agents (PCBAs); and 2) those who are backed by an insurance company, known as bail bond agents (BBAs). If a defendant fails to appear, it is solely the responsibility of the CBA or PCBA, as the case may be, to pay the courts out of his or her own pocket. If the bail agent is a BBA, the insurance company must pay the court if the bail agent does not.

The relationship between insurer and BBA is dissimilar to other lines of insurance in a few major ways. The BBA cannot be an employee of the insurance company.<sup>3</sup> Rather, BBAs are independent contractors appointed by the company to issue bail bonds up to a certain amount using a "Power of Attorney" (POA). POAs are a currency usable only in a court for bail and are similar to issuing a line of credit to the BBA. The BBA posts a bond and pays the insurer a fee. If a defendant fails to appear, the court first asks the BBA to pay the full amount of the bond. If that agent does not pay, the insurer pays the court the money owed on the bond but then seeks reimbursement from the agent who wrote the bond.

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<sup>3</sup>§§ 12-7-101(1) and (7), C.R.S.

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Because the BBA is ultimately responsible for the bail, the premium split between a BBA and insurer is significantly different than in other lines of insurance where the insurer has the ultimate responsibility for paying on claims. For this reason, the BBA receives a much larger percentage of the bail premiums than in other lines of insurance, up to 90 percent or more. Another difference is that the consumer in a typical insurance transaction only deals with his or her agent when purchasing a policy and occasionally when paying premiums. For any other issues, the consumer usually deals with the insurer directly. In a bail bond scenario, the person who contracts with the BBA may never know that the contract is backed by the insurer, and seldom deals with the insurer directly.

There are four states that do not allow any commercial bail bonding: Illinois, Kentucky, Oregon and Wisconsin. Those states employ some variation of a public bail system where the bond is posted directly through the court. They do not use a bail agent as an intermediary.

Ten judicial districts in Colorado employ a form of pretrial services, the foundation of a public bail system. Pretrial services generally perform a risk assessment of individuals charged with a crime. Using the assessment as a guide, recommendations are made to a presiding judge concerning the type of bond and level of supervision a defendant should have while out on bond.

Judges have discretion whether to follow the pretrial services' recommendations. Therefore, it could be said that Colorado has a hybrid public/commercial system. Some individual cases also have a hybrid component, for example a defendant may be out of jail on a commercial bail bond but also be under government pretrial supervision. Pretrial supervision can range from a reminder call to the defendant that a court date is approaching to constant monitoring with a global positioning system.

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## Legal Framework

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### *History of Regulation*

State regulation of bail agents by the Colorado Division of Insurance (DOI) began in 1963, when the General Assembly adopted a law to provide for the licensing and regulation of “professional bailbondsmen.” 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 needed a license.

Though the licensure statute did not contain a mandate that a bailbondsmen be associated with an insurance company, in 1988, the DOI interpreted the statute to require all bail agents be appointed by an insurer. Subsequently, in 1990, the DOI moved to revoke the licenses of the 18 then existing cash bailbondsmen. The cash bailbondsmen appealed the action and the DOI’s action was overruled by an administrative law judge in a decision dated October 18, 1990. That decision found that, although the DOI could legally refrain from licensing any new cash bailbondsmen, it is “equitably estopped from revoking” the license of the remaining cash bailbondsmen. This decision was upheld upon appeal by the DOI. Currently, there are three licensees remaining in this license category now known as “cash bail agents” (CBAs).

As a result of the recommendations made in the 1995 sunset review, the General Assembly repealed a provision that required applicants to furnish the DOI with references attesting to the fact that they were of good moral character. Other statutory provisions were repealed to improve the DOI’s authority to deny, suspend, revoke, and refuse to renew licenses.

In 1998, the General Assembly added the definition of “bail recovery”<sup>4</sup> and provisions enumerating measures that licensed bail agents must take before hiring or contracting with individuals for bail recovery services. Violating the bail recovery provisions also became a basis for discipline.

Statutory provisions that created the board system were added in 1999. The board is a listing of licensed bail agents and bail insurers who are not allowed to write bail because money is owed to the court due to an outstanding forfeiture(s).<sup>5</sup> When a bail agent or insurer fails to pay a bond forfeiture, the agent’s or insurer’s name, as the case may be, goes on a list, which means he, she, or it is “on the board.” The board is maintained by the Colorado State Judicial Branch.

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<sup>4</sup> Pursuant to section 12-7-101(1.5), C.R.S., “bail recovery” means actions taken by a person other than a peace officer to apprehend an individual or take an individual into custody because of the failure of such individual to comply with bail bond requirements.

<sup>5</sup> A forfeiture occurs when a defendant fails to appear in court and the amount of the bail bond must be paid, or “forfeited,” to the court.

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The General Assembly adopted a new license category in 1999, “professional cash bail agent” (PCBA). Similar to the CBA, a PCBA must post a qualification bond of not less than \$50,000 with the DOI. A qualification bond is a deposit or a claims-made bond naming the DOI and the Commissioner as signatories.<sup>6</sup> In the event of a bail bond forfeiture where money is taken from the surety to cover the bond amount, the PCBA is prohibited from writing new bail bonds until the qualification bond is restored to at least \$50,000.

Licensing conditions became more stringent in 1999 and in 2002. In 1999, as a condition for initial licensure, satisfactory completion of education addressing bail bonding and bail recovery began and, starting in 2002, all applicants had to pass a fingerprint-based criminal history record check.

The sunset review performed in 2003, recommended several changes to the recordkeeping, reporting, and enforcement provisions in statute. It also recommended that the insurance appointment process for non-cash agents and the Bail Bond Advisory Committee both be reinstated. All of these recommendations were adopted by the General Assembly.

Regulation of bail agents in Colorado is multifaceted. A bail agent must qualify for a license under two separate articles of the Colorado Revised Statutes (C.R.S.): 1) as an insurance producer governed by Article 2 of Title 10, C.R.S. (Producer Act); and 2) as a bail agent governed by Article 7 of Title 12, C.R.S. (Bail Act). Once licensed as an insurance producer with bail bond authority, he or she is also subject to the bail provisions set forth in the Colorado Code of Criminal Procedure, Article 4 of Title 16, C.R.S., and if he or she finances the premiums charged for a bail bond, those transactions may be governed under the Uniform Consumer Credit Code, Title 5, C.R.S.

### ***Producer License<sup>7</sup>***

There are three types of bail agents, bail bonding agents (BBAs), PCBAs, and CBAs. All are licensed insurance producers and are therefore subject to the same requirements and limitations of licensed insurance producers.

The Producer Act contains the statutes that regulate insurance producers. Obtaining an insurance producer license in Colorado requires passage of a test to ensure the applicant has a, “minimum acceptable level of competence as to the particular line or lines of authority for which the applicant seeks qualification.”<sup>8</sup> If the applicant fails or does not take the examination he or she must reapply and pay the examination fee again.<sup>9</sup>

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<sup>6</sup> DOI Regulation 1-2-13 §§ 7.A.1 and 7.A.2.

<sup>7</sup> This section of the review summarizes the sections of the Producer Act that are directly applicable to bail agents and omits those that are not.

<sup>8</sup> § 10-2-402(1), C.R.S.

<sup>9</sup> §§ 10-2-402(8), and (9), C.R.S.

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The Producer Act waives the examination requirement if the applicant currently possesses a bail producer license in good standing in another state or possessed one within the previous 12 months.<sup>10</sup> The examination is also waived if a bail producer licensed in another state applies for a Colorado license within 90 days of establishing legal residency in Colorado unless the DOI determines otherwise by rule.<sup>11</sup>

An applicant must affirm that the information provided in the license application is true, correct, and complete. Otherwise a license may be refused, suspended or revoked. To qualify for a license the applicant must:<sup>12</sup>

- Be 18 years old;
- Not have committed any act which is a premise for denial, suspension, or revocation as set forth in the Producer Act;
- Be a resident of Colorado;<sup>13</sup>
- Satisfy minimum education requirements, unless exempt;
- Satisfy examination requirements; and
- Be competent, trustworthy, and of good moral character and good business reputation.

A licensee has the obligation to “promptly” notify the DOI of any change that would require amending a license.<sup>14</sup> Nonetheless, an address change notification must be made within 30 days of the change.<sup>15</sup> Changes are to be made in a form prescribed by the DOI.

The DOI sets producer license and continuation fees by rule, at levels that cannot exceed the DOI’s operations costs for the year.<sup>16</sup>

The DOI may issue a temporary producer’s license, valid up to 180 days, without requiring an examination<sup>17</sup> to:

- A surviving spouse, next of kin, an executor, or an employee if a licensed producer dies;<sup>18</sup>
- A spouse, kin, or employee if a licensed producer becomes disabled;<sup>19</sup> and
- Any other person if the DOI decides it is in the best interest of the public.<sup>20</sup>

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<sup>10</sup> § 10-2-403(1)(a), C.R.S.

<sup>11</sup> § 10-2-403(1)(b.5), C.R.S.

<sup>12</sup> § 10-2-404(1), C.R.S.

<sup>13</sup> § 10-2-405(1)(a), C.R.S.

<sup>14</sup> § 10-2-409, C.R.S.

<sup>15</sup> § 10-2-412, C.R.S.

<sup>16</sup> § 10-2-413, C.R.S.

<sup>17</sup> § 10-2-410(1), C.R.S.

<sup>18</sup> § 10-2-410(1)(a), C.R.S.

<sup>19</sup> § 10-2-410(1)(b), C.R.S.

<sup>20</sup> § 10-2-410(1)(e), C.R.S.

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The DOI may impose practice limitations or other requirements on the temporary license and may revoke a temporary license to protect the public.<sup>21</sup>

### Insurer Appointments

No producer may claim an association with an insurer unless the insurer contractually appoints him or her.<sup>22</sup> Every insurer must file an updated list of appointees with the DOI at least once each month. The list must include all information deemed relevant by the DOI.<sup>23</sup> For investigative purposes, a current list of appointments must be made available to the DOI upon request.<sup>24</sup>

Insurer appointments expire each year on October 1. The DOI must provide a list of active appointees to an insurer with an invoice for renewal fees.<sup>25</sup> If an appointment is not renewed by that date, it is considered expired. An expired appointment may be renewed with the payment of renewal and late fees.<sup>26</sup>

Once issued, a producer license remains in effect unless it expires, is discontinued, or is canceled by the producer, revoked by the DOI, or terminated by the insurer.<sup>27</sup>

If an insurer terminates an appointment, that insurer has 15 days to notify the DOI by certified mail.<sup>28</sup> If the termination is for insurance fraud or a violation of the Producer Act or the Bail Act, the insurer must notify the DOI. Upon request by the DOI, the insurer must also provide any information necessary to pursue disciplinary or enforcement actions.<sup>29</sup> Information provided is privileged except that it may be used in criminal or administrative actions. Neither the DOI nor the insurer is liable for requesting or providing the information<sup>30</sup> and any insurer that does not comply with these provisions may be fined up to \$1,000 per incident.<sup>31</sup>

No insurer or producer may compensate someone for selling, soliciting, or negotiating insurance unless the person is a licensed producer; nor can a person accept compensation without a license.<sup>32</sup>

Every trade or fabricated name a producer uses to conduct business must be registered with the DOI; any name change must be promptly filed with the DOI; and no misleading name or one that is under suspension or revocation is acceptable by the DOI.<sup>33</sup>

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<sup>21</sup> § 10-2-410(2), C.R.S.

<sup>22</sup> § 10-2-415.5(1), C.R.S.

<sup>23</sup> § 10-2-415.5(2), C.R.S.

<sup>24</sup> § 10-2-416.5, C.R.S.

<sup>25</sup> § 10-2-415.5(3), C.R.S.

<sup>26</sup> § 10-2-415.5(4), C.R.S.

<sup>27</sup> § 10-2-415.5(2)(b), C.R.S.

<sup>28</sup> § 10-2-415.7(1), C.R.S.

<sup>29</sup> § 10-2-415.7(2), C.R.S.

<sup>30</sup> § 10-2-415.7(3), C.R.S.

<sup>31</sup> § 10-2-415.7(4), C.R.S.

<sup>32</sup> § 10-2-702(1), C.R.S. In this case, the insurance is specifically a bail bond posted with a court.

<sup>33</sup> § 10-2-701, C.R.S.

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## Fiduciary Responsibilities

A producer is authorized to receive and is responsible for all the money he or she accepts on behalf of an insurer.<sup>34</sup> Money due to the insurer must be delivered prior to the date it is due, or within 45 days of receipt if no due date exists.<sup>35</sup> If the money is not received within 90 days, it must be reported to the DOI.<sup>36</sup>

A premium returned by an insurer must be remitted by the producer to the person to whom it is owed, no later than 30 days after receipt from an insurer.<sup>37</sup> Also, an insurer must remit any unearned premium back to a producer for distribution within 45 days of a policy cancelation or termination.<sup>38</sup> Producers are to promptly notify the DOI when an insurer fails to comply.<sup>39</sup>

No premium funds may be comingled with any funds not associated with a producer's insurance business.<sup>40</sup>

## Discipline

There are several specific violations in the Producer Act for which an insurance producer can be disciplined. These fall into the general categories of dishonesty in the licensing process, fraudulent business practices, and engaging in criminal activity.<sup>41</sup> If the DOI finds that a producer has violated any of these provisions, the DOI may place an insurance producer on probation, suspend, revoke, or refuse to issue, continue, or renew an insurance producer license, or order that restitution and/or a fine be paid. When the DOI assesses any penalty, or suspends, revokes, or terminates any license, it must notify both the licensee and the National Association of Insurance Commissioners.<sup>42</sup>

If the DOI does not renew or denies a producer license, the DOI must notify the licensee or applicant of the reason(s) in writing.<sup>43</sup> If the DOI revokes a producer's license or a licensee surrenders a license to avoid discipline, that person is not eligible to re-apply for a license for two years.<sup>44</sup>

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<sup>34</sup> §§ 10-2-704(1)(a), and (4), C.R.S.

<sup>35</sup> § 10-2-704(1)(b), C.R.S.

<sup>36</sup> § 10-2-704(1)(d), C.R.S.

<sup>37</sup> § 10-2-704(1)(c), C.R.S.

<sup>38</sup> In this instance, a bail bond is considered a policy.

<sup>39</sup> § 10-2-704(2), C.R.S.

<sup>40</sup> § 10-2-704(3), C.R.S.

<sup>41</sup> § 10-2-801(1), C.R.S.

<sup>42</sup> § 10-2-803, C.R.S.

<sup>43</sup> § 10-2-801(2), C.R.S.

<sup>44</sup> § 10-2-801(5), C.R.S.

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A licensee has 30 days after the initial pretrial hearing on any criminal prosecution or administrative action taken against him or her to report the incident to the DOI. The report must include any relevant legal documents.<sup>45</sup>

The DOI has broad investigative powers to determine whether any licensee has violated the insurance laws of Colorado or any other state.<sup>46</sup> If it believes that a violation has occurred, then a licensee may be required to appear at hearing and show cause why the license should be retained.<sup>47</sup> A fine of up to \$3,000 may be issued for each violation in addition to a license denial, suspension, or revocation.<sup>48</sup> Additionally, the DOI may penalize a person whose license was previously surrendered or lapsed if it determines that a violation occurred.<sup>49</sup>

### ***Bail Bond License***

The term “bail agent” is employed in the remainder of this report to refer to all bail agents generally. When referring to a specific license category, the report employs the acronym or term defined for that license. The Bail Act authorizes the regulation of bail agents and places enforcement authority with the DOI.<sup>50</sup>

To write bail bonds as a commercial enterprise in Colorado, a person must be licensed as a bail bonding agent (BBA), professional cash bail agent (PCBA), or cash bail agent (CBA).<sup>51</sup> Any person who acts, or attempts to act, as a bail agent without a license, is guilty of a misdemeanor and, if convicted, may be fined up to \$1,000, imprisoned in county jail up to one year, or both.<sup>52</sup> No firm, partnership, association, or corporation may be licensed. Furthermore, no law enforcement or judicial officer may obtain a bail agent license.<sup>53</sup>

A BBA furnishes bail in any court in the state, receives compensation, and is a licensed insurance producer designated by an insurer to execute bail bonds for judicial proceedings. He or she may not be an officer or employee of the insurer, nor pledge currency or property as security for a bail bond.<sup>54</sup>

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<sup>45</sup> §§ 10-2-801(4) and (3), C.R.S.

<sup>46</sup> § 10-2-804(1), C.R.S.

<sup>47</sup> § 10-2-804(2), C.R.S.

<sup>48</sup> § 10-2-804(4), C.R.S.

<sup>49</sup> § 10-2-804(5), C.R.S.

<sup>50</sup> § 12-7-102(3), C.R.S.

<sup>51</sup> § 12-7-102(1), C.R.S.

<sup>52</sup> § 12-7-109(3), C.R.S.

<sup>53</sup> § 12-7-102(2), C.R.S.

<sup>54</sup> §§ 12-7-101(1) and 12-7-102(1), C.R.S.

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Like a BBA, a PCBA furnishes bail for compensation in any court in the state, and is a licensed insurance producer; cannot be a full-time salaried officer of, an employee of, or appointed by an insurer; and cannot be a person who pledges currency or property in connection with a judicial proceeding.<sup>55</sup> A PCBA is required to post a qualification bond worth \$50,000 with the DOI to act as surety for bail, and may not furnish any single bail in a face amount more than twice the amount of the qualification bond,<sup>56</sup> and must have been licensed as a BBA for four years prior to applying for a PCBA license.<sup>57</sup> In the event of the forfeiture of a qualification bond, in whole or in part, a PCBA is prohibited from writing new bail bonds until the qualification bond is restored to at least \$50,000.<sup>58</sup>

A CBA must satisfy all of the same requirements as a PCBA, and is subject to the same limitations, except that there are no limits on the bail amount written against the qualification bond.<sup>59</sup> The licensing of CBAs is limited to people who were CBAs prior to 1992.<sup>60</sup>

The commonality among the licenses is that a person provides a guarantee that a defendant will appear in court as scheduled and is compensated for the surety, i.e., the bail agent is a “compensated surety.”

### License Conditions

Bail agent licenses are valid for two years and expire on January 1<sup>st</sup>.<sup>61</sup>

All applicants for a bail agent license must fulfill an educational requirement prior to the issuance of a license<sup>62</sup> unless a person is (i) applying for a reinstatement of a license, which has been canceled or expired less than one year, or (ii) has been licensed in another state for at least a year and that state’s educational requirements are substantially similar to Colorado’s.<sup>63</sup>

The education requirement consists of at least eight clock hours in three sections including: two hours concerning the criminal court system; two hours concerning industry ethics; and four hours concerning laws relating to bail bonds.<sup>64</sup> All course instructors must meet DOI qualifications<sup>65</sup> and all courses must be approved by the DOI.<sup>66</sup>

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<sup>55</sup> § 12-7-101(7), C.R.S.

<sup>56</sup> § 12-7-103(8)(a), C.R.S.

<sup>57</sup> § 12-7-102.5(7), C.R.S.

<sup>58</sup> § 12-7-103(8)(a), C.R.S.

<sup>59</sup> § 12-7-103(3), C.R.S.

<sup>60</sup> § 12-7-102(1), C.R.S.

<sup>61</sup> § 12-7-102(4), C.R.S.

<sup>62</sup> § 12-7-102.5(1), C.R.S.

<sup>63</sup> § 12-7-102.5(2), C.R.S.

<sup>64</sup> § 12-7-102.5(1)(a), C.R.S.

<sup>65</sup> DOI Regulation 1-2-11 § 8.

<sup>66</sup> DOI Regulation 1-2-11 § 9.

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In addition to the education requirement, all bail agents must complete Peace Officer Standards and Training (POST) compliance training in bail recovery prior to initial licensing. The training cannot exceed 16 hours.<sup>67</sup>

Applicants must submit proof to the DOI that they completed both the educational and the training components.<sup>68</sup>

The Bail Act requires the disclosure to the DOI of information regarding all felony guilty or *nolo contendere* pleas and convictions within the last 10 years; information concerning the engagement in, or commission of any offense that could result in a license denial, suspension, revocation, or refusal to renew;<sup>69</sup> as well as any other information as the DOI may require to implement the Bail Act.<sup>70</sup>

The non-renewal, denial, suspension, or revocation of a license by the DOI may occur for a number of reasons, including:

- Failing to have a required qualification bond in the correct amount in place if licensed as a PCBA or a CBA;<sup>71</sup>
- Knowingly violating or not complying with the Bail Act;<sup>72</sup>
- Engaging in any activity prohibited by the Bail Act;<sup>73</sup>
- Failing to follow the provisions governing the keeping and repayment of collateral;<sup>74</sup>
- Failing to satisfy, pay, or otherwise discharge a bail forfeiture after being placed on the board for more than 45 consecutive days;<sup>75</sup> and
- Continuing to execute bail bonds while on the board if the forfeiture that caused placement has not been paid, stayed, vacated, exonerated, or otherwise discharged.<sup>76</sup>

Licensees have hearing rights under the state Administrative Procedure Act<sup>77</sup> as to any adverse action taken by the DOI.

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<sup>67</sup> § 12-7-102.5(1)(b), C.R.S.

<sup>68</sup> DOI Regulation 1-2-11 §§ 11 and 12(b).

<sup>69</sup> §§ 12-7-103(1)(c) and 12-7-106(1)(e), C.R.S.

<sup>70</sup> § 12-7-103(1)(d), C.R.S.

<sup>71</sup> §§ 12-7-106(1)(a) and 12-7-106(1)(l), C.R.S.

<sup>72</sup> § 12-7-106(1)(b), C.R.S.

<sup>73</sup> § 12-7-106(1)(c), C.R.S.

<sup>74</sup> §§ 12-7-106(1)(g) and 12-7-106(1)(i), C.R.S.

<sup>75</sup> § 12-7-106(1)(d), C.R.S.

<sup>76</sup> § 12-7-106(1)(k), C.R.S.

<sup>77</sup> § 12-7-106(2), C.R.S.

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Section 101(6) of the Bail Act states that “on the board” means that the name of a compensated surety<sup>78</sup> has been publicly posted or disseminated by a court as being ineligible to write bail bonds because a bail forfeiture judgment is unpaid. The name stays on the board until that judgment is satisfied, vacated, or otherwise discharged by a court order.<sup>79</sup> It is a violation of the Bail Act for a licensee to act as a bail agent in any court in the state while on the board.<sup>80</sup>

### Prohibitions

The Bail Act enumerates several conditions governing the receipt, return, reporting, and retention of collateral used in bail bonding transactions.<sup>81</sup> It prohibits licensees from specifying, suggesting, or advising an attorney to represent his or her client.<sup>82</sup> Additionally, a bail agent that coerces, suggests, helps, or threatens any bail client to persuade that person to commit any crime violates the Bail Act.<sup>83</sup>

Prohibitions against a bail agent paying a fee or rebate, or giving anything of value to business associates are far-reaching and extend to:

- An attorney in bail bond matters, except in defense of any action on a bond or as counsel to represent a bail agent or such agent's representative or employees,<sup>84</sup>
- The person on whose bond a licensee is surety,<sup>85</sup> and
- A jailer, police officer, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any district attorney's employees, or any person who has power to arrest or to hold any person in custody.<sup>86</sup>

Any licensee who violates any of the Bail Act's prohibitions commits a misdemeanor which may be punished by a fine of up to \$1,000 per offense, imprisonment in county jail for up to one year, or both.<sup>87</sup> The DOI has the ability to impose a fine in lieu of suspending or revoking a license, except in felony cases or cases when a PCBA's qualification bond is less than half of a single bail bond written by the PCBA. Fines can range from \$300 to \$1,000. If a licensee does not pay the fine within 20 days, the DOI may revoke or suspend a license, unless the action is stayed by a court.<sup>88</sup>

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<sup>78</sup> Pursuant to section 12-7-101(2.5), C.R.S., "compensated surety" means any person in the business of writing bail appearance bonds who is subject to regulation by the DOI, including bonding agents and bail insurance companies.

<sup>79</sup> § 16-4-112(5)(e), C.R.S.

<sup>80</sup> § 12-7-109(1)(g), C.R.S.

<sup>81</sup> §§ 12-7-109(1)(d.5),(e),(k),(n), and 12-7-107(3), C.R.S.

<sup>82</sup> § 12-7-109(1)(a), C.R.S.

<sup>83</sup> § 12-7-109(1)(f), C.R.S.

<sup>84</sup> § 12-7-109(1)(c), C.R.S.

<sup>85</sup> § 12-7-109(1)(d), C.R.S.

<sup>86</sup> § 12-7-109(1)(b), C.R.S.

<sup>87</sup> § 12-7-109(2), C.R.S.

<sup>88</sup> § 12-7-106(3), C.R.S.

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## Recordkeeping

The Bail Act requires that both the DOI and each licensee keep records of bail bond transactions.

Every bail agent must maintain a current and up-to-date bond register that identifies all bonds and other undertakings completed by the licensee.<sup>89</sup> Licensees must submit an annual report, no later than November 1 of each year, that includes the name of each defendant, a description of the transaction, the amount of collateral or surety received, the names of persons who failed to appear, and whatever else the DOI reasonably requires.<sup>90</sup>

In addition to the annual report, licensees must file with the DOI the premium rates charged for bail and file a revision each time the rates change.<sup>91</sup> The Bail Act also directs each PCBA and CBA to pay a premium tax on the fees collected for bail services because they are self-insured.<sup>92</sup> As authorized insurance companies, the insurers that appoint BBAs pay the premium tax on the business they execute.

The DOI must maintain records for all matters relevant to bail bonds in accordance with the Uniform Records Retention Act. The records must include, at minimum, information of persons seeking a license, complaints concerning individual licensees, and summaries of actions taken by the DOI on behalf of or against a licensee.<sup>93</sup>

To protect the public, ensure compliance, and enforce the Bail Act, the DOI is empowered to examine the relevant records of each licensee, as well as to conduct a market conduct examination of every licensee every three years.<sup>94</sup>

## Bail Recovery

The Bail Act defines bail recovery as,

...actions taken by a person other than a peace officer to apprehend an individual or take an individual into custody because of the failure of such individual to comply with bail bond requirements.<sup>95</sup>

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<sup>89</sup> § 12-7-108(3)(r), C.R.S.

<sup>90</sup> § 12-7-105(1), C.R.S.

<sup>91</sup> § 12-7-110.5(1), C.R.S.

<sup>92</sup> § 12-7-111, C.R.S.

<sup>93</sup> § 12-7-105(2), C.R.S.

<sup>94</sup> § 12-7-113, C.R.S.

<sup>95</sup> § 12-7-101(1.5), C.R.S.

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Prior to, “hiring, contracting with, or paying any compensation” for bail recovery services with any person who is not a licensed bail agent, the prospective recovery agent must have fingerprints taken by a local law enforcement agency for a Colorado Bureau of Investigation (CBI) background check.<sup>96</sup> The CBI must establish and maintain files regarding the criminal background of every person who seeks to provide bail recovery services.<sup>97</sup> Additionally, a licensee must:<sup>98</sup>

- Verify that the individual submitted fingerprints to the CBI for a criminal background check and confirm that the person has not been convicted of or pled guilty or *nolo contendere* to any felony during the past 15 years;
- Obtain a copy of a certificate of training from the individual indicating that he or she received training in bail fugitive apprehension which complies with the standards established by the POST Board; and
- Obtain a statement from the individual attesting, under penalty of perjury, that he or she is providing true and complete information to the bail agent.

The CBI is required to inform any licensed bail agent making an inquiry, whether an individual seeking work as a recovery agent has applied for a background check and if the individual has been convicted of or pled guilty or *nolo contendere* to any felony during the past 15 years.<sup>99</sup>

### **Bail Bond Advisory Committee**

The Bail Act establishes the Bail Bond Advisory Committee (Committee) consisting of:

- One representative from law enforcement;
- One representative from CBAs;
- One representative from PCBAs;
- Three representatives from BBAs; and
- One representative from surety companies.

The Committee is tasked with rendering advice to the DOI in matters involving complaints, helping to ensure that agents properly report and pay premium taxes,<sup>100</sup> and reviewing all rules related to bail bonds proposed by the DOI. The Committee may make recommendations regarding rule implementation to the DOI and the DOI must make those recommendations available to the public.<sup>101</sup>

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<sup>96</sup> § 12-7-105.5(2), C.R.S.

<sup>97</sup> § 12-7-105.5(3), C.R.S.

<sup>98</sup> § 12-7-105.5(1), C.R.S.

<sup>99</sup> § 12-4-105.5(4)(b), C.R.S.

<sup>100</sup> § 12-7-104.5(1)(a), C.R.S.

<sup>101</sup> § 12-7-104.5(1)(b), C.R.S.

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## Judicial Regulation

### Judicial Discretion

If a person is deemed eligible for release from custody on bail, the judge in the case has discretion in deciding which bond alternative will be used:<sup>102</sup>

- A personal recognizance bond;<sup>103</sup> or
- A bond in the full amount of the bail secured by one or more, or any combination of, the following:
  - A cash deposit with the court or stocks and bonds equal to the required bail in which trustees are authorized to invest trust funds;<sup>104</sup>
  - Unencumbered real estate equity or sureties owned by the accused or any other person acting as surety on the bond, worth at least 150 percent of the amount of the bail set;<sup>105</sup> and
  - BBA, PCBA, or CBA services.<sup>106</sup>

### Real Estate Collateral

If the bond is secured by real estate through a bail agent, the agent must provide a disclosure to the indemnitor that reads:<sup>107</sup>

#### 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!

In addition to the disclosure, an agent must provide the property owner with a completed copy of the instrument creating the lien before the lien is executed. Failure to comply with either of these provisions makes the lien voidable.<sup>108</sup>

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<sup>102</sup> §§ 16-4-103, and 16-4-105, C.R.S.

<sup>103</sup> § 16-4-104(1)(a), C.R.S.

<sup>104</sup> § 16-4-104(1)(b)(I), C.R.S.

<sup>105</sup> §§ 16-4-104(1)(b)(II) and (III), C.R.S.

<sup>106</sup> § 16-4-104(1)(b)(III), C.R.S.

<sup>107</sup> § 16-4-104(3)(a)(I), C.R.S.

<sup>108</sup> § 16-4-104(3)(a)(III), C.R.S.

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Within 30 days after exoneration of the bail, the agent must deliver a fully executed and notarized reconveyance of title, a certificate of discharge, or a full release of any lien against a property, plus the original canceled note, the original deed of trust, security agreement, or other instrument that secured the obligation. If the bonding agent fails to comply, the property owner may petition the court to make the agent comply. Agents who violate these provisions are liable to the property owner for all damages sustained from the violation, plus \$300 in statutory damages. A property owner who prevails in court is entitled to recover court costs and reasonable attorney fees.<sup>109</sup>

### Exoneration

A bail agent is exonerated from liability on a bond if the conditions of the bond are met, a forfeiture has been paid, or the defendant is unable to appear because of death or incarceration in a foreign jurisdiction and the State of Colorado has refused to extradite. If the State extradites the defendant, the transportation costs associated with the extradition are the responsibility of the bail agent up to the amount of the bond.<sup>110</sup>

When the terms and conditions of a bond are changed within 10 working days after the posting of a bond, the court may order a bail agent to refund a portion of the premium paid by the defendant to prevent unjust enrichment.<sup>111</sup>

If a defendant is surrendered into custody by the bail agent prior to the date fixed on the bond, the court may order a partial refund of the premium to the indemnitor. When a defendant fails to appear and is surrendered prior to a final judgment of forfeiture, the bond is exonerated.<sup>112</sup>

An exoneration automatically occurs when the court orders a deferred prosecution.<sup>113</sup> It also happens automatically after three years from the posting of the bond unless the court grants an extension or a forfeiture judgment has been entered against the surety or the bond indemnitor.<sup>114</sup>

### Board System

The General Assembly adopted the board system to:

- Simplify and expedite bail bond forfeiture procedures by authorizing courts to bar compensated sureties who fail to pay forfeiture judgments from writing further bonds;
- Minimize the need for day-to-day involvement of the DOI in routine forfeiture enforcement; and
- Reduce court administrative workload.

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<sup>109</sup> §§ 16-4-104(3)(a)(IV) and (V), C.R.S.

<sup>110</sup> §§ 16-4-108(1)(a) and (b), C.R.S.

<sup>111</sup> § 16-4-108(1.5), C.R.S.

<sup>112</sup> § 16-4-108(1)(c), C.R.S.

<sup>113</sup> § 16-4-108(2), C.R.S.

<sup>114</sup> § 16-4-108(1)(e), C.R.S.

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If the court declares a bond forfeited, the forfeiture order is served on the bail agent within 10 days by certified mail and, if the bail agent is appointed by an insurer, the bail insurance company.<sup>115</sup> A bail agent has 15 days to ask for a hearing on the forfeiture or within 30 days of the forfeiture order, the court must enter judgment for the State.<sup>116</sup> The agent has 90 days after a judgment to produce the defendant or pay the forfeiture amount.<sup>117</sup>

If a forfeiture goes unpaid the bail agent is put on the board and cannot write bail in Colorado until the unpaid judgment is, "satisfied, vacated, or otherwise discharged."<sup>118</sup> However, if the bail agent is a BBA and is on the board for more than 30 days, his or her insurer has 15 days to pay the judgment or it also goes on the board and is not allowed to underwrite bail in the state until the judgment is satisfied, vacated, or otherwise discharged.<sup>119</sup> Once all judgments are satisfied, vacated, or otherwise discharged, the names are removed from the board and the parties are once again able to write bail.<sup>120</sup>

If a bail agent writes a bond while he or she is on the board, the bond itself is valid despite the ineligible status of the agent. The ineligibility to write a bail bond cannot be used as a defense in any forfeiture.<sup>121</sup>

The court may vacate a forfeiture judgment "if it appears that justice so requires."<sup>122</sup> The court considers the following factors when making that decision:<sup>123</sup>

- The willfulness of the defendant's violations of the conditions of bail;
- The surety's participation in locating or apprehending the defendant;
- The cost, inconvenience, and prejudice suffered by the State resulting from the violation;
- Any intangible costs;
- The public interest in ensuring the defendant's appearance; and
- Any other mitigating factors. These factors encompass the principle that generally only acts of God, of the State, or of law will relieve a surety from liability.

If a bail agent effects the apprehension or surrender of a fugitive within one year of a forfeiture payment and notifies the court that the defendant is available for extradition, the court must vacate the judgment and order and remit the amount paid on the bond less any necessary and actual costs incurred by the State and the sheriff who extradited the fugitive.<sup>124</sup>

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<sup>115</sup> § 16-4-112(5)(b), C.R.S.

<sup>116</sup> § 16-4-112(5)(b)(III), C.R.S.

<sup>117</sup> §§ 16-4-108(5)(c) and (d), C.R.S.

<sup>118</sup> § 16-4-112(5)(e), C.R.S.

<sup>119</sup> § 16-4-112(5)(f), C.R.S.

<sup>120</sup> § 16-4-112(5)(g), C.R.S.

<sup>121</sup> § 16-4-112(5)(k), C.R.S.

<sup>122</sup> § 16-4-112(5)(h), C.R.S.

<sup>123</sup> *People v. Bustamante-Payan*, 856 P.2d 42 (Colo. App. 1993) (decided under former § 16-4-109(3), C.R.S.); *People v. Escalera*, 121 P.3d 306 (Colo. App. 2005); *People v. Diaz-Garcia*, 159 P.3d 679 (Colo. App. 2006).

<sup>124</sup> § 16-4-112(5)(j), C.R.S.

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## Program Description and Administration

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The Colorado Division of Insurance (DOI) regulates, to some degree, all domestic, foreign, and alien insurers who sell insurance in Colorado. It generally does not segregate or account for personnel and other fiscal expenditures on the basis of the individual lines of insurance which it regulates. Table 1 lists the expenditures for the entire DOI for the period under review, fiscal years 05-06 through 09-10. During that time the DOI increased its number of full-time equivalent (FTE) employees from approximately 76 to 85 which held through the final two years, fiscal year 08-09 and 09-10.

**Table 1**  
**DOI Fiscal Information**  
**Fiscal Years 05-06 through 09-10**

<b>Fiscal Year</b>	<b>Total DOI Expenditure</b>	<b>FTE</b>
05-06	\$8,147,302.00	76.5
06-07	\$8,404,654.00	79.0
07-08	\$8,951,764.00	80.0
08-09	\$10,017,574.00	84.9
09-10	\$9,789,341.41	84.7

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### **Licensing**

The DOI issues three classes of insurance producer license to bail agents: bail bonding agent (BBA), professional cash bail agent (PCBA), and cash bail agent (CBA). Bail agent licenses renew every two years.

The "Total" data in Tables 2, 3, and 4, represent the total number of individuals licensed to write bail bonds for each license type in Colorado on December 31<sup>st</sup> of the corresponding year. Because bail agent licenses are renewed biennially, these tables do not reflect the number of licenses which may be issued in any one year.

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BBA

Table 2 shows the number of BBA licenses issued by the DOI during the period under review.

**Table 2**  
**BBA Licenses Issued**  
**Calendar Years 2005-2009**

<b>Calendar Year</b>	<b>New</b>	<b>Reinstatement</b>	<b>Renewal</b>	<b>Total Active</b>
2005	80	20	102	541
2006	98	28	205	581
2007	91	22	160	548
2008	85	18	208	546
2009	71	19	142	531

PCBA

Table 3 lists the licensing information for PCBAs during the sunset review period. Note the annual totals are significantly less than that of the BBAs, approximately 94 percent fewer annually.

**Table 3**  
**PCBA Licenses Issued**  
**Calendar Years 2005-2009**

<b>Calendar Year</b>	<b>New</b>	<b>Reinstatement</b>	<b>Renewal</b>	<b>Total Active</b>
2005	2	0	3	29
2006	5	0	24	32
2007	1	0	7	32
2008	4	0	28	35
2009	1	0	8	36

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## CBA

Since 1988, the DOI no longer issues new original licenses to CBAs. Article 7 of Title 12, Colorado Revised Statutes (C.R.S.) (Bail Act), limits CBA licenses to those individuals who were CBAs prior to 1992.<sup>125</sup> The 1992 sunset review reported that in 1990 there were a total of 18 CBAs licensed in Colorado and the 2003 review reported the number had dwindled to 8. Table 4 illustrates that attrition has been slow but has continued, with four CBAs renewing a license in 2009. Those four CBAs represent 0.7 percent of the total bail agents licensed by the DOI.

**Table 4**  
**CBA Licenses Issued**  
**Calendar Years 2005-2009**

Calendar Year	New	Reinstatement	Renewal	Total Active
2005	0	0	0	5
2006	0	0	4	5
2007	0	1	0	4
2008	0	0	4	4
2009	0	0	0	4

### ***Education & Examination***

Initial licensure requires that a candidate complete an education component prior to examining for a license. The component contains two units: eight clock hours concerning the bail bond industry and 16 clock hours on bail recovery. The educational providers must supply the candidate with a certificate of completion that may be requested by the DOI any time within five years of completion. An electronic copy must also be sent to Pearson VUE, the vendor the DOI retained to provide examination services for applicants.<sup>126</sup>

The examination consists of 50 multiple-choice questions covering seven content areas:

- License, appointment, and termination requirements;
- Powers and duties of the DOI;
- Unfair trade practices;
- Bail bond procedures;
- Bail bond producer responsibilities; and
- Definitions.

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<sup>125</sup> § 12-7-102(1), C.R.S.

<sup>126</sup> State of Colorado Licensing Examination Bail Bonding Agent Candidate Handbook, January 2009, Pearson VUE, p. 4-5.

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Pearson VUE administers the examination several times per month at seven locations across Colorado:

- Colorado Springs,
- Durango,
- Grand Junction,
- Greeley,
- Greenwood Village,
- Pueblo, and
- Wheat Ridge.

The examination fee is \$73.00 and must be paid by the candidate when making the reservation. Table 5 shows the pass rates of those taking the bail agent examination during the period under review.

**Table 5**  
**Bail Agent Examination**  
**Fiscal Years 05-06 through 09-10**

<b>Fiscal Year</b>	<b>First Time</b>	<b>Pass Rate (%)</b>	<b>Retakes</b>	<b>Retake Pass Rate (%)</b>	<b>Total Passing</b>	<b>Overall Pass Rate (%)</b>
05-06	127	69.29	47	59.57	116	66.67
06-07	109	64.22	49	55.10	97	61.39
07-08	120	72.50	42	50.00	108	66.67
08-09	97	80.41	17	58.82	88	77.19
09-10	98	78.57	31	61.29	96	74.42

It is interesting to note that those who fail their initial examination, fail a retest at a higher rate than those taking it for the first time during every year under review.

In addition to the examination fee, other fees a candidate is responsible for are a \$267.00-license fee, and a \$39.50-fingerprint check fee.

Any bail agent previously licensed in another state is exempt from Colorado pre-licensing and examination requirements if he or she has a clearance letter from that state and the license has been inactive for less than 90 days. If the license has been inactive for more than 90 days, the applicant must complete the Colorado pre-licensing education, examination, and fingerprint requirements.

### Surety

CBAs and PCBAs are required to deposit \$50,000 surety with the DOI in case there is a forfeiture judgment against them.

## Complaints/Disciplinary Actions

Complaints tend to come to the DOI from consumers but also come from other sources. The DOI may also initiate complaints. Table 6 shows the number and types of complaints filed during the review period.

**Table 6  
Complaint Information  
Fiscal Years 05-06 through 09-10**

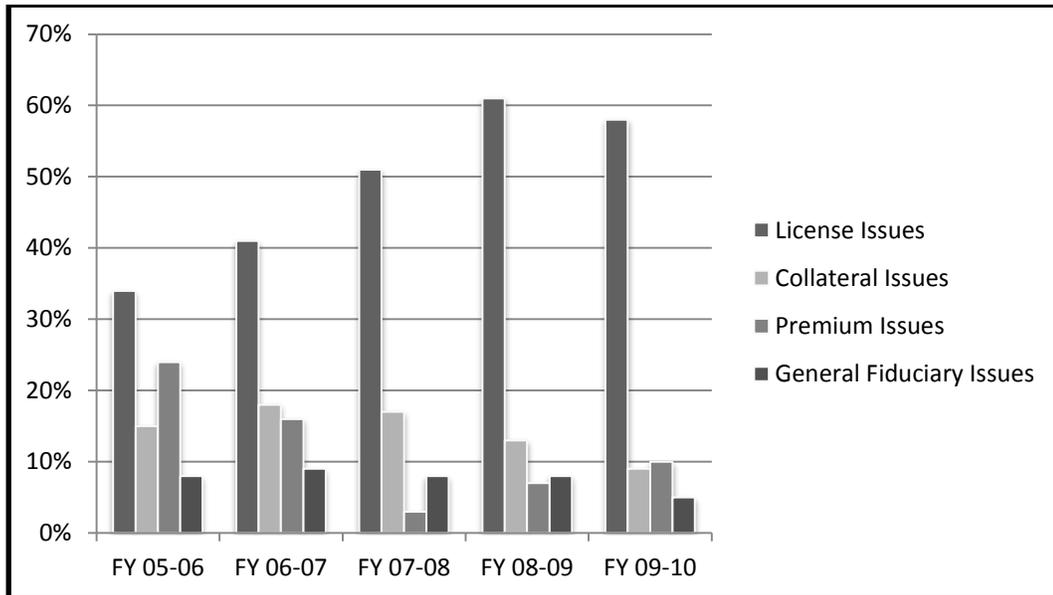
Nature of Complaints	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Failure to File Annual Reports	3	270	200	90	236
General Fiduciary Issues (comingled funds)	12	8	8	12	5
Unauthorized Activity (no license)	14	9	9	8	13
Failure to Post Bonds with Court (Returned premium but not w/in 48 hours)	6	5	0	3	5
Theft (stolen premium)	11	5	0	3	0
Return of Collateral (ROC)--Cash	12	10	8	7	6
ROC—Personal Property	5	2	3	5	0
ROC—Real Property	2	3	6	7	3
Premium Issues (over/under charge)	13	4	3	4	5
Licensing Qualification (LQ)— General	13	12	12	19	10
LQ—Arrest	1	4	6	7	6
LQ—Felony Conviction	4	7	8	7	3
LQ—Failure to Disclose	1	1	14	28	15
LQ—No Appointment (BBA)	4	0	0	21	12
LQ—Bond Issues (CBA/PCBA)	5	2	1	2	0
Other	20	13	21	19	18
<b>TOTAL</b>	<b>126</b>	<b>355</b>	<b>299</b>	<b>242</b>	<b>337</b>
Unique Individuals	54	307	247	145	229

Table 6 illustrates that the overwhelming majority of complaints against licensees concern failing to file the annual report on time. The requirement for an annual report was adopted by the General Assembly in 2004. It was in the second year of the requirement that the complaints escalated. This one type of complaint makes up approximately 58 percent of all complaints filed during the period under review. Agents are required to keep a daily register of all undertakings associated with commercial bail activities. Once per year they are required to mail a report to the DOI accounting for all daily register activities. These reports help regulators investigate complaints expeditiously. Failure to file a report is an administrative violation which most directly impacts the DOI in its oversight and enforcement activities. The high number of this one type of violation skews the complaint numbers to a great extent.

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To illustrate more substantive complaint issues, Graph 1 reorganizes the remaining complaints into violation types that directly affect consumers.

**Graph 1**  
**Categories of Bail Agent**  
**Direct Impact Violations**

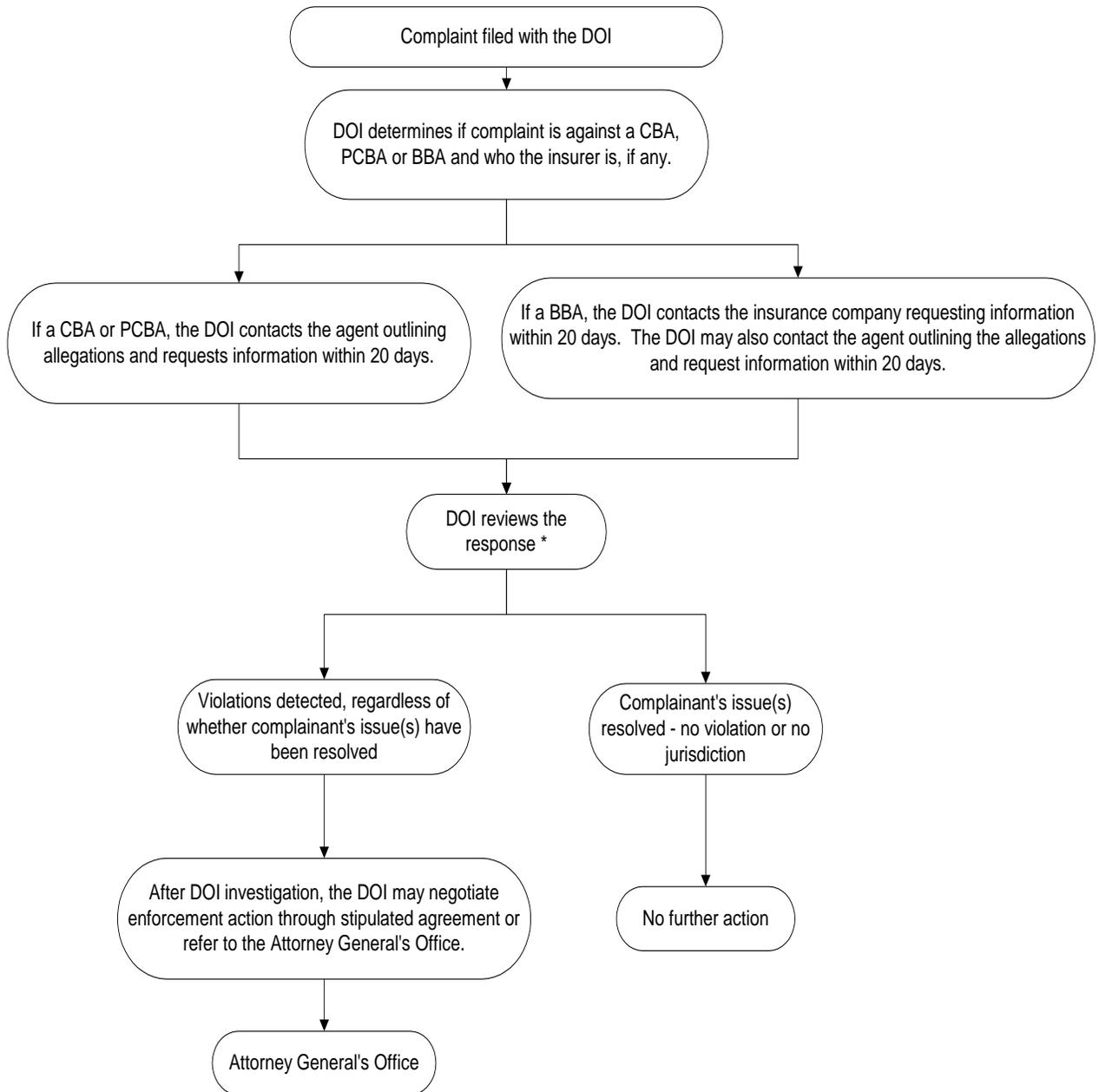


The graph shows that in all reviewed years, licensing issues dominate the remaining issues. Issues such as operating without a license or no longer satisfying the qualifications for licensure make up these complaints. The remaining complaints are based on a licensee's mishandling of the collateral used to indemnify a bond, the premium paid to the agent to provide the bond, or otherwise breaching the trust of any party involved in the financial transaction.

Though there is variation, complaints follow the same general path shown in the flow chart below. Complaints typically begin with a consumer complaint, notification by the courts, or are based on an internal indicator at the DOI. The DOI first determines what type of license the agent holds and requests information on the case. Once it is satisfied that it has all pertinent information, the DOI acts. It may dismiss the charge or take disciplinary action, i.e., suspend a license, revoke a license, place a licensee on probation, issue a fine, or order restitution. The licensee may negotiate the penalty(s) with the DOI; choose to accept the penalty, thereby ending the process; or contest the decision in a hearing.

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## Complaint Process



\* Many times, the information submitted by the respondent or insurance company contains indications of other violations not alleged in the original complaint or the response is incomplete, thus requiring the DOI to request additional information.

Table 7 indicates the actions that were taken on the bail agent complaints during the sunset review period. There may be more than one enforcement action taken in a given case and all enforcement actions are included in the “Total.”

**Table 7  
Final Agency Actions  
Fiscal Years 05-06 through 09-10**

Final Agency Actions					
	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Fine	58	19	46	61	35
Restitution	3	1	1	1	0
License Revocation	20	1	37	34	36
License Denial	8	6	17	27	25
License Suspension	13	2	2	5	1
Withdrawal in Lieu of Denial	6	4	7	14	5
Probation	0	1	3	4	5
Commissioner Action	85	14	57	67	58
<b>TOTAL</b>	<b>193</b>	<b>48</b>	<b>170</b>	<b>213</b>	<b>165</b>

The data show that early in the review period, the DOI generally issued fines rather than acted against a bail agent’s license, i.e., revocation, suspension, or probation. However, that ratio became much smaller as years moved forward until fiscal year 09-10, when there were seven more license actions than fines.

The DOI is empowered to levy fines up to \$1,000 for violations of the Bail Act, and up to \$3,000 for violations of Article 2 of Title 10, C.R.S., the Producer Act. Additionally, the DOI is empowered to demand restitution from all bail agents. Table 8 shows the number of times a fine or restitution was ordered during the review period and the dollar amount associated with the totals. “Restitution” is money owed to a consumer due to a licensee’s violation.<sup>127</sup>

**Table 8  
Fines and Restitution  
Fiscal Years 05-06 through 09-10**

Fines and Restitution				
Fiscal Year	Fines	Value	Restitution	Value
05-06	58	\$103,050	3	\$86,025
06-07	19	\$87,550	1	\$7,125
07-08	46	\$89,800	1	\$41,700
08-09	61	\$175,250	1	\$5,000
09-10	35	\$183,963	0	\$0

<sup>127</sup> § 10-2-801(6), C.R.S.

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## ***The Board System***

The “on the board report” is a list of bail agents and insurance companies that have unpaid outstanding bond judgments against them. It is compiled and listed by the Colorado State Judicial Branch (Judicial).

When a defendant fails to appear for a court date the bail agent is responsible to pay the bond amount. If the bail agent fails to pay the bond amount, a judgment is entered by the court for the amount of the bail against that agent. If a judgment goes unpaid, the agent is put on the board. When an agent is placed on the board he or she cannot post bonds in Colorado until the judgment is paid and the name is removed from on the board.

If a bail agent is a BBA, the BBA’s insurer becomes liable for any unpaid bond judgment. If the insurance company fails to pay, then the insurance company is also put on the board. Similar to a bail agent, if an insurance company is on the board it is not allowed to underwrite bonds in Colorado.

Judicial updates the board report twice daily but does not keep historical data concerning which bail agents and insurance companies go on the board, or the number listed over the course of a year. The purpose of the report is to inform bail professionals, other courts, and jailers of current unpaid judgments.

If a judgment goes unpaid for more than 120 days, Judicial informs the DOI. The DOI then begins disciplinary action against the bail agent and/or the insurer.

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## Analysis and Recommendations

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### ***Recommendation 1 – Continue the regulation of bail agents for five years, until 2017.***

The purpose of this sunset review is to evaluate the need for continued state regulation of bail agents, i.e., Article 7 of Title 12, Colorado Revised Statutes (C.R.S.) (Bail Act). A central purpose for conducting a sunset review is to determine,

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[.]<sup>128</sup>

Table 9 reports the number of commercial bonds posted by bail agents as reported by the Colorado State Judicial Branch (Judicial) during the review period.

**Table 9  
Commercial Bonds  
Posted in Colorado Courts  
Calendar Years 2006 – 2010**

Commercial Bonds	
2006	69,145
2007	67,124
2008	62,655
2009	58,894
2010	55,908

During the review period, an average of 63,000 commercial bail bonds were written each year in Colorado. The decrease over time is due to fewer people needing bail bond services.

The defendants and indemnitors represented in Table 9 are exposed to potential harm from incompetent or unethical bail agents. Comingling of funds, theft, and failure to return collateral are examples of harm that can occur at the hands of bail agents. Further, the customers of bail agents are especially vulnerable because of the circumstances they face. It seems reasonable, then, that state oversight through licensing of bail agents is appropriate in this instance.

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<sup>128</sup> § 24-34-104(9)(b)(I), C.R.S.

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Given that harm to consumers can be demonstrated, state regulation of this occupation exists to protect consumers in three ways: creation and enforcement of standards for entry into the occupation; investigation of consumer complaints against licensees; and discipline of licensees when appropriate.

This 2011 sunset review finds that the Colorado Division of Insurance (DOI) does an excellent job of administering the licensing duties related to bail agents. Tables 2, 3, 4, and 5 contain licensing and examination data compiled by the DOI. Department of Regulatory Agencies (DORA) staff found no problems with administration of licensing functions and stakeholders reported no problems with the DOI's administrative function.

Related to licensing, the bail agent examination process deserves mention in this review. DOI, through a private vendor, administers the examination several times each month at seven locations across Colorado. Since state licensing of an occupation is a barrier to entry, it is important that government agencies administer regulatory programs in a way that does not create additional administrative barriers to entry. As an example, the administration of the licensing examination on the western slope and in eastern Colorado, removes a potential regulatory burden from applicants who live in those parts of the state because they do not have to drive to Denver to take the examination.

After licensing individuals to practice as bail agents, the second leg of the consumer protection structure is response to consumer complaints against bail agents. As discussed previously in this review and as illustrated by Table 6 and Graph 1, complaint activity is high especially in consideration of the relatively low number of licensees.

Importantly, during the review period, of the hundreds of complaints acted on by the DOI, a high number were filed against unique individuals, i.e., individuals with at least one complaint levied against him or her. Table 10 depicts the total number of people licensed during a specified fiscal year (total licensees), the number of licensees with at least one complaint levied against him or her (unique individuals), and the percentage of licensees involved in a complaint for the stated year.

**Table 10**  
**Licensees Involved in Complaints**  
**Fiscal Years 05-06 through 09-10**

<b>Fiscal Year</b>	<b>05-06</b>	<b>06-07</b>	<b>07-08</b>	<b>08-09</b>	<b>09-10</b>
Total Licensees	575	618	584	585	571
Unique Individuals	54	307	247	145	229
Licensees Involved in a Complaint	9.3%	49.6%	42.3%	24.8%	40.1%

These statistics show that from fiscal years 06-07 to 09-10, the DOI received complaints against approximately one-quarter to one-half of all licensees. While a complaint is no gauge of guilt in a given instance, and in these cases there are an extraordinarily high number of administrative complaints, the existence of such high complaint numbers leads to the conclusion that many consumers perceive that they have been wronged by a bail agent.

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One of the clear indicators of consumer protection through occupational licensing, and the third factor of the bail agent regulatory scheme, is discipline of a licensee by the DOI. Regulators revoked or suspended an average of 30 licenses per year during the sunset review study period. Those 30 licenses represented roughly five percent of the active licenses, i.e., one of every 20 bail agents lost the ability to practice each year during the sunset review period because of misconduct. Such high ratios certainly show that regulatory oversight is desirable.

Because the majority of the bail bonds written in Colorado are commercial and the demand for regulatory action against licensees by the DOI is great, the General Assembly should continue the regulation of bail agents by the DOI for five years, until 2017.

***Recommendation 2 – Create a license for bail bonding agencies.***

The bail industry is atypical compared with other lines of insurance. Bail bonding agents (BBAs) are prohibited from being insurance company employees by the Bail Act, are independent contractors who are extended credit by the insurer by which they are appointed, and they shoulder ultimate contractual responsibility for their bail undertakings. In spite of the contractual relationships, the DOI regulates bail the same as other lines of insurance. Its perspective is that an insurance company should make sure its appointed producers follow the laws of Colorado. It holds the insurer responsible for the conduct of the independent contractors through market conduct examinations.

The DOI conducted several market conduct examinations of insurance companies authorized to conduct bail business in Colorado during the period studied for this sunset review. Those examinations yielded fines of more \$2 million dollars and the disqualification of one company to conduct business in Colorado. Most of the issues for which the insurers were disciplined were based on the business practices of the individual agents they appointed. Issues such as failing to require the bail agents to complete required documentation, failing to provide a consumer with proper disclosures, or bail premium rate discrimination were cited. All are matters an insurer may become aware of after the fact but for which it is nevertheless responsible.

Research showed that while problems within the bail industry exist in other states, the problems do not appear to be as far-reaching as seems to be the case in Colorado. To identify and address these problems, DORA staff met with several stakeholder groups from all facets of the industry and DOI staff. Based on the second sunset statutory criterion, which directs analysis to determine the least restrictive regulatory environment consistent with public interest, one of the goals of this sunset review was to develop a scheme to facilitate more accountability within the industry, where the industry would be more self-policing. An industry with better-defined regulatory access points for regulators to gather information to guard the public well-being is the end goal.

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In order to accomplish that goal, Colorado should create a new bail bond license structurally placed between the BBA (who is licensed) and the insurer (which is also licensed). The regulatory model used successfully by other states is the licensing of bail bond agencies. Such a license has very little effect on the bail bond business model but dramatically increases day-to-day oversight by the industry itself, particularly when multiple agents work for one agency. Agency licensing creates a “captain of the ship” structure that identifies one owner/manager who is ultimately responsible for the actions taken by bail agents working for the agency.

Currently, the Bail Act contains a prohibition against the licensing of agencies. Interestingly, there are no such prohibitions on other lines of insurance within Colorado. By removing this prohibition, the DOI can create and implement an effective and efficient regulatory license that enhances consumer protection through increased accountability in the least restrictive manner possible.

The licensing of agencies will address a host of fiduciary, administrative, and accountability issues that emerged as problems during this sunset review. If an agency is allowed to employ licensed bail agents and is listed as the entity responsible for all undertakings, then there could be several people in several locations to sign documents, take payments, and record all administrative tasks on behalf of the employer.

Licensing bail bond agencies will also provide the insurer easier communication with, and more control over independent contractors for whose conduct it is ultimately answerable. This is generally how the insurance industry operates. It can rightfully be argued that under the current system, the insurer should keep track of the individuals with whom it chooses to associate. As the DOI’s recent market conduct examinations demonstrate, however, this is not always the case.

This change will improve chances of achieving a more self-policing, regulatory compliant industry moving forward. An insurer will deal with a singular entity with several appointed agent employees. The insurer will be more empowered to address its issues proactively rather than trying to keep tabs on scores of agents.

Finally, if this recommendation is adopted, the DOI will be able to reallocate some of its resources and provide more efficient regulation. The change to a more accountable industry will allow the DOI to modify some of its reporting requirements, such as the daily bond register which this review will discuss in more detail in Recommendation 4. It will also present the opportunity for the DOI to perform market conduct examinations at the agency level and hold accountable the people performing the tasks directly responsible for them. Currently it is only the insurers that undergo the close-up scrutiny of the market conduct examination. By getting closer to the points of interaction between the consumer and the bail agent, the DOI will be better able to effectively protect the consumer.

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To ensure that the DOI has all the enforcement power it needs to protect consumers under the new regulatory scheme, the General Assembly should use portions of the California Insurance Code as a template, which includes the following key criteria:<sup>129</sup>

- Each owner must be a licensed bail agent;
- Disciplinary action may be taken against any owner and any licensee whose actions would be grounds for disciplinary action against a licensee;
- An agency may execute bail only through licensed bail agents;
- 100 percent of the shares of the agency shall be held by licensed bail agents;
- If the agency is a corporation, all shareholders, officers, and directors of a corporation should be licensed bail agents, and should be disclosed to the DOI; and
- Any sale or transfer of stock or other interest in the corporation should require the prior approval of the DOI.

The new statute should be very clear that there is one owner/manager responsible for all activities conducted by the agency as well as for supervision of the individually licensed bail agents. Again, the California Insurance Code can be used as a model. It is very explicit that in all matters respecting the transaction of bail, it is “conclusively presumed” that an employee acted on behalf of, and pursuant to, the instructions of the employer. Moreover, an appointed employee is the employer’s responsibility until notice is filed revoking the appointment.<sup>130</sup>

The chain of responsibility in this section, and the resulting accountability, is clear and should be incorporated into Colorado law. A bail agent must be appointed by an agency, as well as by an insurer. Both the agency and the licensed bail agent will be individually responsible for acting in accordance with the laws governing the industry. To further protect consumers, the new Colorado law should also stipulate that a person may be appointed by only one agency at any one time regardless of how many insurers appoint him or her. Making a bail agent responsible to one agency assures that the consumer knows who is responsible if he or she believes it is necessary to file a complaint with the DOI.

There should also be a requirement that prior to being licensed as an agency, a bail agent must have worked as a BBA for at least four years. There is precedent in bail regulation for this prerequisite. Currently under the Bail Act, prior to getting licensed as a professional cash bail agent (PCBA), an applicant must have been a BBA for four years.<sup>131</sup> Moreover, to make this revamped system work, all BBAs, even sole proprietors, must be appointed by his or her own agency prior to writing bail bonds in Colorado. Regulators with the Utah Insurance Department maintain that agency regulation is a key link in the chain of accountability and responsibility for them.

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<sup>129</sup> § 1810, California Insurance Code.

<sup>130</sup> § 1803, California Insurance Code.

<sup>131</sup> § 12-7-102.5(7), C.R.S.

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Cash bail agents (CBAs) and PCBAs should not be eligible for licensure as a bail bond agency. The justification for this is twofold. First, this change is to rectify problems associated with regulatory compliance by insurers and insurance company-appointed BBAs, and their respective interaction with the DOI. CBAs and PCBAs are not backed by insurance companies, and as such do not have the same issues related to the assignment of authority and responsibility.

The second justification is that CBAs and PCBAs are structured as self-insured, independent individuals, responsible for all aspects of their own personal enterprise and are exempt from the majority of insurance laws beyond those specific to bail bonding. In exchange for that status, a CBA or PCBA deposits a \$50,000 surety with the DOI to insure his or her own transactions. Insurance companies that appoint BBAs are subject to multiple, complex state laws. These are the same laws that govern the operation of all lines of insurance and have provisions regulating the formation and naming of companies, all aspects of company investments, the parameters of holding company operations, and procedures for liquidation of a company when applicable. If CBAs and PCBAs were allowed to assume the functions of agencies, including employing other bail agents, in effect, they would be acting as an insurance company without the consumer protections otherwise applicable to authorized insurers.

Included in the Bail Act is also a prohibition against bail agents being employees of an insurance company. This prohibition shields entrepreneurs, such as CBAs and PCBAs, who choose to operate an independent business and keeps unforeseen conflicts of interest from arising. This sunset review found no evidence that consumers would benefit from a change allowing insurers to directly employ bail agents; consequently, the recommendation is to keep the *status quo* in this regard.

The regulatory conditions outlining appointment relationships and reporting procedures among agents, insurers, and the DOI currently exist in statute. Those conditions and provisions should remain intact as is practicable and expanded as needed to accommodate the new system to include appointments of an employee by an employer.

The criteria that govern sunset reviews ask whether conditions have changed that warrant a change in regulation and if current regulation represents the least restrictive regulation consistent with the public interest. This sunset review concludes that market conditions have changed and current regulation that prohibits the licensing of bail bonding agencies is overly restrictive. The licensing of bail bonding agencies is a relatively simple solution to a large set of structural problems. This solution was developed in concert with regulators and industry representatives. It expands the marketplace, encourages self-regulation, and enhances public protection.

Therefore, the General Assembly should create a license for bail bonding agencies and incorporate the criteria and conditions discussed above.

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***Recommendation 3 – Continue the Bail Bond Advisory Committee for five years until 2017, change its membership, and assign it new duties.***

The Bail Bond Advisory Committee (Committee) is charged with providing advice to the DOI on complaints, the reporting and payment of premium tax, and reviewing and advising on proposed rules. If the recommendations made in this sunset review are adopted, the Committee could become an invaluable part of the transition into the new regulatory environment. If its membership and mission are revised, it can help steer both the DOI and the regulated community through the changes that are on the horizon for the industry.

Rather than reviewing individual complaint files, the reconstituted Committee would be more valuable if it examines trends in complaints against bail agents and agencies, and gives the DOI advice concerning DOI policies. It should also continue reviewing and advising the DOI on proposed rules.

In addition to these responsibilities, the Committee should work with the DOI to develop appropriate pre-licensing education standards for bail agents and standards of practice for licensees.

There are indications that bail agents are not trained sufficiently. The initial indication is that while bail agents represent 0.5 percent of the insurance producers licensed in Colorado, the DOI reports that approximately 50 percent of all complaints involve bail agents. Allowing for several issues that could mitigate this figure, the sum is still out of proportion to the ratio of licensed bail agents compared to the entire population of insurance producers.

Another indication that pre-licensing training is not adequate is based on observation of the training sessions the DOI staged for licensees during the spring of 2011. Section 102.5 of the Bail Act sets out the minimum education requirements to become licensed as a bail agent in Colorado. These include completing a minimum of eight clock hours regarding bail bonding, only four of which must be on the topic of bail laws, and 16 hours regarding bail recovery services.

The DOI training sessions lasted approximately four hours, the total required in the Bail Act on the topic of bail laws. It was clear that many of the attendees, virtually all of whom were licensed bail agents, did not have a good grasp of the laws that govern the profession. In fact, some attended multiple sessions just to better understand the subject matter.

A third indication of inadequate training is the pass rate of those who take the licensure examination reported on page 24 of this sunset report. The pass rate improved significantly over the final two years observed, but, on average, fewer than 7 of every 10 people examined (69 percent), pass.

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Currently no national education standards exist and other states' requirements range from no educational requirement to a very heavy requirement. The Committee and the DOI must find equilibrium between the two and develop a program that ensures qualified people are being licensed while not placing too high a burden on those wishing to obtain a license.

The reauthorized Committee membership should change to reflect the changed regulatory environment.

The overwhelming majority of bail agents in Colorado are appointed by insurers, approximately 94 percent annually. Further, the DOI's recent market conduct examinations resulted in insurers bearing the majority of the consequences of the actions of the BBAs whom they appoint. With the reorganization of the regulatory system, as envisioned by Recommendation 2 of this sunset report, the insurers and agencies will take more direct, hands-on responsibility for most bail agent actions. Therefore, the major voice on the Committee should represent that segment of the industry.

Other changes should include the addition of a public member and a member from a pretrial services program. Those additions represent previously unrepresented segments of the bail system.

The addition of a public member is intended to give the public an inside view of the industry and a voice in regulation. The Committee should consist of the following:

- Two members who represent insurers authorized to write bail bonds in Colorado, who are not BBAs;
- One member who is a BBA and is in charge of a bail agency;
- One member who is a BBA and is not in charge of a bail agency;
- One member who is a CBA or a PCBA;
- One member from a judicial district pretrial services program; and
- One member of the public with no ties to the commercial bail industry.

A reformed Committee can be valuable moving forward in a changing regulatory environment. Therefore, the General Assembly should reconstitute the Committee, continue it for five years until 2017, change its membership, and assign it new duties as set forth above.

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***Recommendation 4 – Eliminate the Daily Bond Register and modify the annual reporting requirements in the Bail Act.***

The Bail Act requires each licensed bail agent to provide an annual report to the DOI chronicling bail bonding activities for the previous year.<sup>132</sup> It also requires bail agents to maintain an up-to-date bond register identifying all bond-related undertakings executed by the licensee – a daily bond register (DBR).<sup>133</sup> If Recommendation 2 of this sunset review regarding the licensing of agencies is adopted, then the annual report and DBR is no longer needed for each individual BBA.

If the agency is responsible for all bonds written and all fiduciary activities connected to the bail bond transactions, then it is the agency that should be principally responsible for keeping and reporting the required information, not the individual BBA. Rather than an individual DBR, a comprehensive, up-to-date file with all the information required by statute and rule should be kept for each bond written through the agency. The DOI should retain explicit rule-making authority over what is required and in what format it should be kept.

Most insurers perform periodic audits on the agents they appoint. As a condition of appointing the agencies, insurers should be required to audit an appointed agency at least once every two years. All audits performed by an insurer should be made available to the DOI.

CBAs and PCBAs will not be appointed by an agency and are not appointed by an insurer. Rather, they are self-insured businesses. In addition to the DBR and the annual report, they are required to submit to the DOI, every six months, a report of bond-related activity for premium tax purposes.<sup>134</sup>

This report should be modified to include all the information the DOI needs from both a DBR and the annual report. Each PCBA and CBA should also be directed to keep a comprehensive, up-to-date file with all the information required by statute and rule, for each bond he or she writes. This will eliminate the need for the DBR and an annual report, and limit the required reports to two per year. Additionally, they should be required to keep a comprehensive up-to-date file with all the information required by statute and rule for each bond written. Again, the DOI should retain explicit rule-making authority over what is required and in what format it should be kept.

Accurate and comprehensive transaction files are key to the ability of the DOI to protect the interests of the individual consumer and the general public. For that reason, the DOI should make the penalties steep for those who fail to record all undertakings connected to every bond.

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<sup>132</sup> § 12-7-105(1), C.R.S.

<sup>133</sup> § 12-7-108(3), C.R.S.

<sup>134</sup> DOI Rule 1-2-13(5).

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The statutory criteria that guide sunset reviews direct DORA to identify and remove unnecessary regulatory burdens from licensees. The level of reporting currently mandated in the Bail Act will not be essential for the DOI to carry out its duties and responsibilities for consumer protection if the recommendations in this report are adopted. Therefore, the General Assembly should eliminate the DBR and modify the annual reporting requirements in the Bail Act.

***Recommendation 5 - Assess PCBAs and CBAs a fee to pay for market conduct examinations of those licensees.***

The provisions governing the business of insurance include systems for the examination of the activities, operations, financial condition and affairs of all persons engaged in the business of insurance in Colorado.<sup>135</sup> A market conduct examination is an in-depth investigation of a company using several analytical methods. If the DOI finds issues, it takes action to rectify the problems and protect consumers. For example, recent market conduct examinations of bail insurers discovered that transaction records often were not correctly maintained and that, at times, premium rates were set discriminatorily.

During the course of this sunset review it became apparent that the self-insured PCBAs and CBAs on one hand, and insurers who appoint BBAs on the other hand, are subject to disparate levels of oversight for conducting very similar business. The DOI has not conducted market conduct examinations of individual bail agents. It has concentrated on the insurers that appoint the BBAs even though the Bail Act gives it unequivocal authority to conduct an examination of all licensees once every three years.<sup>136</sup>

Given the results of recent market conduct examinations of bail insurers, it is reasonable to conclude that there should be closer scrutiny of the individual cash agents. While it cannot be assumed that market conduct examinations of the PCBAs and CBAs would yield similar results, there is also no reason to conclude that results would be different considering that the majority of the research conducted took place in the bail agents' offices, not at the insurer's office. If the same nature and scope of violations are found during an examination of a PCBA or CBA, the DOI could take appropriate enforcement action in the interest of consumer protection.

The DOI has not conducted market conduct examinations of individual agents principally because of limited resources. In a typical market conduct examination, the licensee pays the costs associated with the examination. Normally an outside examiner inspects all of the germane insurer records. The process takes approximately one year, is rigorous, and can be resource intensive.

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<sup>135</sup> § 10-1-201, C.R.S.

<sup>136</sup> § 12-7-113, C.R.S.

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It is expected that the costs of the examination of an individual bail agent would be adjusted significantly, in comparison to that of an insurance company. Provisions governing title insurance companies present a precedent and suggest a model for individual companies paying into a fund to support the market conduct examinations performed by the DOI:

For the purpose of providing adequate funds to the [DOI] for market analysis, investigation, and enforcement of the insurance code, in addition to any other fee collected ... each title insurer regulated by the [DOI] pursuant to Article 11 of this title shall pay a nonrefundable annual fee on or before March 1 of each year. This fee shall be established by the Commissioner...<sup>137</sup>

The General Assembly should enact similar provisions applicable to PCBAs and CBAs. This model works particularly well for small businesses because the cost is shared among all of the licensees subject to the individual examinations. To control costs, rather than contracting with an outside entity the DOI could perform this function in-house.

To protect Colorado consumers, to make the marketplace more equitable, and to ensure to the greatest extent possible that all bail agents are following applicable laws, the General Assembly should assess PCBAs and CBAs a fee to pay for market conduct examinations of those licensees.

***Recommendation 6 – Make CBAs and PCBAs and any unauthorized financiers subject to statutes governing Unfair Competition – Deceptive Practices in Part 11 of Title 10, C.R.S.***

The PCBAs and CBAs (cash agents) are backed by the \$50,000 qualification bond they are required to post with the DOI. The 1999 legislation authorizing the licensing of PCBAs was designed to encourage entrepreneurship. People who were willing to post their own money, rather than being backed by insurance company funds, were given an exemption from the majority of the complex regulatory scheme which generally governs insurance companies doing business in Colorado.

The DOI also promulgated a rule that sets the terms and conditions for qualification bonds.<sup>138</sup> Among those terms and conditions are:

- If the monies that fund the qualification bond consist of proceeds from a loan, promissory note or other financial arrangement, the terms of the loan, promissory note, and financial arrangement must be submitted to the DOI;

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<sup>137</sup> § 10-3-207(1)(f)(I), C.R.S.

<sup>138</sup> DOI Rule 1-2-13 (7).

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- If the qualification bond consists of monies from a loan, promissory note or other financial arrangement, such must be an arms-length transaction in which the agreement terminates upon a fixed period of time and any rate of return is not tied to any bail bond business posted by the PCBA or CBA but to an annual percentage rate; and
  - The financial arrangement cannot be tied to any premium or collateral or any other direct function to which the bail agent conducts bail bond business.

If the DOI determines that the financial arrangements with respect to the qualification bond violate these regulatory limitations, the bail agent and the third party providing the financing should be subject to the insurance provisions concerning Unfair Competition – Deceptive Practices,<sup>139</sup> specifically, the sections that prohibit reporting false information to the DOI.

To protect consumers from unauthorized activities, the General Assembly should make CBAs and PCBAs and any unauthorized financiers subject to the statutes governing Unfair Competition – Deceptive Practices in Part 11 of Article 3, of Title 10, C.R.S.

***Recommendation 7 – Harmonize the fining authority between the Producer Act and the Bail Act, by adopting the standards of the Producer Act, and direct the DOI to promulgate a schedule of fines for violations.***

Currently, the DOI may issue fines for violations of the Bail Act or associated rules in lieu of other discipline such as suspension or revocation. It may also issue fines and other discipline for violations of the Producer Act. The fine amounts allowable and the ability to both fine and issue other discipline are different in the two acts that regulate bail agents. The Bail Act allows the DOI to levy fines up to \$1,000 for violations of the Bail Act<sup>140</sup> and the Producer Act allows fines up to \$3,000 per violation, “in addition to or in lieu of denial, suspension, or revocation.”<sup>141</sup> These provisions should be harmonized. Because bail agents are insurance producers with bail authority, the guidelines in the Producer Act should be used in the Bail Act. Additionally, the DOI should develop a fining schedule to determine the level of fines for each offense.

The issuance of a fine can be an effective tool in ensuring compliance of practitioners. Inadequate or incomplete recordkeeping are issues that constituted a majority of complaints pursued by the DOI during the period under review. These violations may not justify the suspension of a license, except in extreme or chronic cases. Issuing a minimal, predictable fine combined with the knowledge that the fine will progressively increase with each subsequent violation, can be a major deterrent to minor violations or violations generated through apathy.

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<sup>139</sup> § 10-3-1101, *et seq.*, C.R.S.

<sup>140</sup> § 12-7-109(2), C.R.S.

<sup>141</sup> § 10-2-804(4), C.R.S.

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The General Assembly felt it advisable to provide this disciplinary tool to the DOI. To use the tool effectively and consistently, the DOI should develop guidelines for its use, including a fining schedule. A fining schedule should reflect fines in lesser amounts for first violations.

Correcting the conflicting provisions in the two acts will bring equity into the implementation process among the different classes of insurance producers.

The General Assembly should harmonize the fining authority between the Producer Act and the Bail Act, by adopting the standards of the Producer Act, and direct the DOI to promulgate a schedule of fines for violations.

***Recommendation 8 - Repeal the requirement in section 12-7-105.5(1), C.R.S., that prior to compensating a bail recovery agent, a bail agent must reconfirm that the recovery agent is qualified.***

Bail recovery services are actions taken by a non-peace officer to apprehend a person for not complying with bail bond requirements.<sup>142</sup> In layperson's terms, a bail recovery person is a bounty hunter. Section 12-7-105.5(1), C.R.S., dictates that, "...prior to hiring, contracting with, or paying any compensation to any ... [bail recovery agent]," a bail agent must.<sup>143</sup>

- Confirm that the individual has submitted fingerprints to the Colorado Bureau of Investigation (CBI) for a criminal background check;
- Confirm that the individual has not been convicted of or pled guilty or *nolo contendere* to any felony under federal or state law;
- Obtain a copy of a certificate of training from the individual indicating that he or she has received training in bail fugitive apprehension; and
- Obtain a statement from the individual attesting that he or she is providing true and complete information to the bail agent.

The DOI interprets the statute to mean that a bail agent must perform these steps at least twice in each transaction: prior to hiring or contracting, and prior to compensating. Although not an enforcement issue, it has caused great consternation between regulators and regulated professionals.

If the goal is to ensure that the people asked to apprehend criminals are qualified, then it is reasonable to keep the steps in place prior to hiring or contracting with a bail recovery agent. However, it is not reasonable or necessary to require the steps be repeated again prior to compensating the bail recovery agent and, presumably, after performance.

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<sup>142</sup> § 12-7-101(1.5), C.R.S.

<sup>143</sup> § 12-7-105.5(1), C.R.S.

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Additionally, the Bail Act states that a bail agent cannot compensate a bail recovery agent if he or she knows, through any source, that the bail recovery agent, “has been convicted of or pled guilty or *nolo contendere* to a felony under federal or state law during the previous 15 years.”<sup>144</sup> This section, combined with the steps taken prior to the hiring or contracting the bail recovery agent, fulfills the need of public protection without the regulatory obstacles.

Demanding that all of the steps be performed again prior to compensating the bail recovery agent is an overly restrictive regulatory burden with no added benefit to the public interest.

Therefore, the General Assembly should repeal the requirement in section 12-7-105.5(1), C.R.S., that prior to compensating a bail recovery agent, a bail agent must reconfirm that the recovery agent is qualified.

***Recommendation 9 – Require the Colorado Judicial Branch to keep a comprehensive historical record of bail transactions and the board system.***

The DOI has the responsibility of enforcing all of the licensing conditions of the Bail Act, including those associated with a bail agent being placed on the board for not paying forfeitures. Among those are failing to satisfy, pay, or otherwise discharge a bail forfeiture after being placed on the board for more than 45 consecutive days;<sup>145</sup> and continuing to execute bail bonds while on the board if the forfeiture that caused placement has not been paid, stayed, vacated, exonerated, or otherwise discharged.<sup>146</sup> Both of these sections require that the DOI be able to investigate a historical record. However, the DOI is unable to fulfill this statutory obligation because there are no historical records of the board system.

Judicial uses the board to ensure that the bail agents who are present at the jail are indeed eligible to transact business at that time. Therefore, Judicial does not keep a historical record of bail transactions.

Because of this the DOI is unable to fulfill its statutory obligation.

Another issue came to light during the course of this review, a bail agent reported that she was mistakenly listed on the board multiple times over the course of a year because she shares the same last name as bail agents that should have been listed on the board. Because of the listing, she was unable to write bail bonds and was forced to prove her innocence. This administrative obstacle is akin to having one’s identity stolen. DORA was unable to verify that this problem even existed because of the lack of record.

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<sup>144</sup> § 12-7-105.5(4)(a), C.R.S.

<sup>145</sup> § 12-7-106(1)(d), C.R.S.

<sup>146</sup> § 12-7-106(1)(k), C.R.S.

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Openness, transparency, and accountability are bulwarks of democratic governing. Government must be receptive to approach and review by any interested party in order for the public to know that it performs acceptably. Without historical records, a critical evaluation of services is not possible. Regulators demand that the regulated public keep records just for those purposes and governmental systems should not be immune from the same accountability.

The fourth criterion that guides sunset reviews directs DORA to analyze whether statutory duties are performed efficiently and effectively. Both of these cases illustrate that without a record to research claims of malfeasance, the public could be harmed without remedy or recourse.

Therefore, to ensure that the regulatory system runs effectively and efficiently, and to protect the public from harm, the General Assembly should require Judicial to keep a comprehensive historical record of bail transactions and the board system.

***Recommendation 10 - Remove “knowingly” as a standard for discipline.***

The DOI and the Attorney General’s Office are hampered by the requirement that they must prove a bail agent was,

Knowingly failing to comply with or knowingly violating any provisions of [the Bail Act] or of any proper order or rule of the [DOI] or any court of this state where the licensee knew or reasonably should have known of the provisions, order, or rule.<sup>147</sup>

This sets an extremely high standard for a regulator to substantiate, a standard that is not represented in other sections of the insurance statutes. A state enforcement agency cannot prove what was on a person’s mind when he or she engaged in conduct which, on its face, appears to violate applicable law. In most cases, the DOI is not aware that a licensee has violated the law until a complaint has been filed against that licensee. The grounds for discipline exist to protect citizens and maintain the integrity of the marketplace. Having to prove the state of mind of a licensee is an extremely difficult burden and often thwarts the DOI’s ability to protect Colorado citizens who may have been harmed.

The General Assembly authorizes the licensing of professions upon the condition and expectation that the licensee will know of and comply with applicable laws and regulations governing the particular industry or occupation for the protection of the public’s interest. By virtue of having a license, every licensee has the duty to know the laws governing his or her profession. If a licensee operates outside of those laws, he or she knew or reasonably should have known of the provisions.

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<sup>147</sup> § 12-7-106(1)(b), C.R.S.

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For purposes of enforcement of administrative and regulatory laws, as opposed to criminal prosecutions, the DOI should not have the extraordinary burden of proving the mental state of licensees in the conduct of their professional obligations. Furthermore, licensees are afforded due process throughout disciplinary procedures and the appeals process.

Therefore, the General Assembly should delete “knowingly” as a standard for discipline in the Bail Act.

***Recommendation 11 – Direct the DOI to set license renewal dates and annual report dates administratively.***

Currently, the Bail Act delineates the dates for license renewals and annual reports. The licenses renew biennially on January 1<sup>148</sup> and the annual reports are due no later than November 1 of each year.<sup>149</sup> Including dates in statutes tends to be problematic for both regulators and the regulated community.

The license renewal dates do not fit in with other license renewal guidelines within the DOI. In order to take advantage of advances in internal accounting, technology, and other administrative systems and to fully realize administrative efficiencies, the DOI should be authorized to establish renewal and reporting cycles administratively. The DOI needs the flexibility to correlate the renewal periods for programs. Removing the date requirements in the Bail Act will enable the DOI to establish uniform renewal guidelines for all of the programs within the DOI, creating a uniform licensing system and increasing efficiency and customer service. It will also better enable the DOI to conform to the needs of the business community.

The complaint information presented in Table 6 of this sunset review shows that the vast majority of complaints pursued by the DOI concerning bail agents are associated with the annual report. The reporting period is based on the State’s fiscal year, which runs July through June, and are due on November 1. Many of the licensees feel that the reporting window, from July 1 to November 1, is too large. Allowing four months to submit a report encourages procrastination by the agents and they often forget to submit them on time. While this is not a valid reason to change the reporting date on its own, the DOI should consider this feedback when setting reporting dates administratively.

Additionally, most businesses operate on the calendar year not the State’s fiscal year. The DOI expresses that there is no administrative reason explaining why the reports need to be based on the State’s fiscal year; it merely enforces what is written in the statute.

The General Assembly should remove unnecessary regulatory burdens from the Bail Act and direct the DOI to set license renewal dates and annual report dates administratively.

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<sup>148</sup> § 12-7-102(4), C.R.S.

<sup>149</sup> § 12-7-105(1), C.R.S.

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***Administrative Recommendation 1 – The DOI should approve all reporting forms prior to use.***

A provision that requires information be submitted to the DOI in a “form determined by the Commissioner” appears in multiple places in the statutes that regulate bail agents. This condition has caused great anxiety for both the DOI and the licensees.

Enforcement of law depends, to a large degree, on the information available to those who implement it. Currently, the DOI requires certain information be submitted in a specific format. Other times the format is not specified, just the information. Because bail transactions involve several different forms, receipts, and disclosures, there are various opportunities for a bail agent to be out of compliance if all requirements are not met.

The DOI, individual bail agents, and bail insurance companies are in agreement that the best solution to this problem is that prior to using a form, it should be submitted to the DOI for approval. Once a form is approved, the DOI should not change its approval unless there is a statute or rule change. Consideration was given to an alternative solution: having the DOI promulgate the forms. Both the industry and the DOI felt it would be cost prohibitive to first develop standard forms and then integrate a single form into so many different systems. The approval of the forms is the preferred alternative.

Since all BBAs use forms disseminated by the insurer that appoints him or her, it must be the responsibility of the insurer to have forms approved and ensure that all appointed agents use them. PCBAs and CBAs are self-insured, sole proprietor businesses; consequently, they alone would be responsible for obtaining DOI approval for the forms they use.

To simplify reporting, recordkeeping, and encourage compliance with regulatory guidelines, the DOI should approve all reporting forms prior to use.