

CHAPTER 368

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 04-1240

BY REPRESENTATIVE(S) Cadman, Brophy, Butcher, McGihon, Rhodes, Welker, and Wiens;
also SENATOR(S) Hagedorn.

AN ACT

CONCERNING CONTINUATION OF THE REGULATION OF BAIL BONDING AGENTS BY THE DIVISION OF INSURANCE.

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

SECTION 1. Part 4 of article 2 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-2-415.5. Appointment of insurance producer bail bonding agent - continuation - renewal - exceptions. (1) NO INSURANCE PRODUCER WITH BAIL BONDING AGENT AUTHORITY AS SET FORTH IN SECTION 10-2-407 (1) (f) SHALL CLAIM TO BE A REPRESENTATIVE OR AUTHORIZED OR APPOINTED AGENT OF, OR USE ANY OTHER TERM IMPLYING A CONTRACTUAL RELATIONSHIP WITH, A PARTICULAR INSURER OR ACCEPT APPLICATIONS ON BEHALF OF SUCH INSURER UNLESS SUCH INSURANCE PRODUCER BECOMES, PURSUANT TO A CONTRACT IN WRITING, A PRODUCER APPOINTEE, APPOINTED BY THAT INSURER IN ACCORDANCE WITH THIS SECTION, TO ACT IN THE CAPACITY OF AN AGENT OF THE INSURER.

(2) (a) AN INSURER SHALL NOTIFY THE COMMISSIONER OF EACH PRODUCER BAIL BONDING AGENT APPOINTMENT. EACH INSURER SHALL FILE WITH THE COMMISSIONER, MONTHLY OR AT SUCH OTHER LESS FREQUENT INTERVALS AS THE COMMISSIONER MAY PRESCRIBE, A CURRENT LIST OF INSURANCE PRODUCERS THAT IT HAS APPOINTED TO SOLICIT BUSINESS ON ITS BEHALF. THE LIST SHALL CONTAIN ALL RELEVANT APPOINTMENT INFORMATION AS PRESCRIBED BY THE COMMISSIONER, INCLUDING THE EFFECTIVE DATE OF APPOINTMENT.

(b) SUBJECT TO RENEWAL, EACH INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT SHALL REMAIN IN EFFECT UNTIL:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) THE INSURANCE PRODUCER'S LICENSE IS ALLOWED TO EXPIRE, DISCONTINUED, OR CANCELLED BY THE INSURANCE PRODUCER BAIL BONDING AGENT OR REVOKED BY THE COMMISSIONER; OR

(II) NOTICE OF TERMINATION OF THE APPOINTMENT IS FILED WITH THE COMMISSIONER BY THE INSURER.

(3) EACH ACTIVE INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT SHALL BE SUBJECT TO RENEWAL ON OCTOBER 1 OF THE RENEWAL YEAR. THE DIVISION SHALL PROVIDE A LIST OF ACTIVE INSURANCE PRODUCER APPOINTEES TO THE INSURER ALONG WITH A RENEWAL INVOICE STATING THE FEE REQUIRED FOR THE RENEWAL OF EACH ACTIVE INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT.

(4) ANY APPOINTMENT THAT IS NOT RENEWED ON OR BEFORE OCTOBER 1 SHALL BE DEEMED TO HAVE EXPIRED OR DISCONTINUED, EFFECTIVE ON THAT DATE; EXCEPT THAT THE COMMISSIONER MAY RENEW AN INSURER'S APPOINTMENT UPON RECEIPT OF THE RENEWAL INVOICE TOGETHER WITH THE RENEWAL FEES DUE AND ANY APPLICABLE LATE FEE.

10-2-415.7. Termination of insurance producer bail bonding agent - notice - penalty. (1) UPON THE TERMINATION OF THE APPOINTMENT OF AN INSURANCE PRODUCER BAIL BONDING AGENT, THE INSURER SHALL, WITHIN FIFTEEN DAYS, NOTIFY THE COMMISSIONER AND THE APPOINTEE OF SUCH TERMINATION BY CERTIFIED MAIL.

(2) IF THE TERMINATION OF AN AGENT'S APPOINTMENT IS FOR ANY OF THE CAUSES LISTED IN SECTION 10-1-128, 10-2-801, 12-7-106, OR 12-7-109, C.R.S., THE INSURER SHALL NOTIFY THE COMMISSIONER OF THE REASON AND, IF THE COMMISSIONER SO REQUESTS, THE INSURER SHALL PROVIDE ANY INFORMATION, RECORDS, STATEMENTS, OR OTHER DATA PERTAINING TO THE TERMINATION THAT MAY BE USED BY THE DIVISION IN ANY ACTION TAKEN PURSUANT TO SECTIONS 10-2-801 AND 12-7-106, C.R.S.

(3) ANY INFORMATION, DOCUMENTS, RECORDS, OR STATEMENTS PROVIDED PURSUANT TO THIS SECTION SHALL BE PRIVILEGED, AND THERE SHALL BE NO LIABILITY ON THE PART OF, NOR SHALL A CAUSE OF ACTION OF ANY NATURE ARISE AGAINST, THE DIVISION, THE INSURANCE COMPANY, OR ANY AUTHORIZED REPRESENTATIVE FOR REQUESTING OR PROVIDING SUCH INFORMATION, DOCUMENTS, RECORDS, OR STATEMENTS; EXCEPT THAT SUCH INFORMATION MAY BE USED BY THE DIVISION TO PURSUE ADMINISTRATIVE OR CRIMINAL PROSECUTIONS.

(4) IN ADDITION TO ANY OTHER PENALTY OR LIABILITY AUTHORIZED BY LAW, THE FAILURE OR REFUSAL OF ANY INSURER TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1) OR (2) OF THIS SECTION SHALL BE CAUSE FOR THE ASSESSMENT AGAINST THE INSURER OF A CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS FOR EACH SUCH FAILURE OR REFUSAL IF, AFTER NOTICE TO THE INSURER AND AFTER A HEARING IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., THE COMMISSIONER FINDS THAT THE INSURER HAS VIOLATED THIS SECTION.

SECTION 2. 2-3-1203 (3) (z), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(z) July 1, 2013:

(III) THE ADVISORY COMMITTEE TO THE DIVISION OF INSURANCE REGARDING BAIL BOND ISSUES, CREATED IN SECTION 12-7-104.5, C.R.S.

SECTION 3. 12-7-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-7-102. License required - qualifications - enforcement. (6) THE DIVISION SHALL NOTIFY EACH BAIL BONDING AGENT IN WRITING ON AN ANNUAL BASIS REGARDING CHANGES TO THE STATE LAWS REGARDING THE REGULATION OF BAIL BONDING AGENTS.

SECTION 4. 12-7-103 (1) (c), Colorado Revised Statutes, is amended to read:

12-7-103. License requirements - application - qualification bond - forfeiture. (1) Any person desiring to engage in the business of bail bonding agent in this state shall supply the following information to the division:

(c) Whether the applicant has been convicted of a felony, ENTERED A GUILTY PLEA TO A FELONY, ACCEPTED A PLEA OF NOLO CONTENDERE TO A FELONY, or engaged in or committed an act described in section 12-7-106 (1) during the previous ten years;

SECTION 5. 12-7-104.5, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

12-7-104.5. Advisory committee - repeal. (1) (a) THERE IS HEREBY CREATED AN ADVISORY COMMITTEE TO RENDER ADVISORY DECISIONS TO THE DIVISION IN MATTERS INVOLVING COMPLAINTS AND HELP TO ENSURE THAT BAIL BONDING AGENTS PROPERLY REPORT AND PAY PREMIUM TAX. THE COMMITTEE SHALL BE COMPOSED OF ONE REPRESENTATIVE OF LAW ENFORCEMENT, ONE REPRESENTATIVE OF CASH BAIL BOND AGENTS, ONE REPRESENTATIVE OF PROFESSIONAL CASH BOND AGENTS, THREE REPRESENTATIVES OF SURETY BOND AGENTS LICENSED IN THIS STATE, AND ONE REPRESENTATIVE OF SURETY COMPANIES. THE COMMITTEE MEMBERS SHALL SERVE WITHOUT COMPENSATION. APPOINTMENTS SHALL BE MADE BY THE COMMISSIONER. THE REPRESENTATIVE OF CASH BAIL BOND AGENTS AND TWO OF THE REPRESENTATIVES OF SURETY BOND AGENTS SHALL BE APPOINTED FOR AN INITIAL TERM OF TWO YEARS. ALL OTHER APPOINTMENTS SHALL BE FOR TERMS OF FOUR YEARS. VACANCIES THAT OCCUR DURING ANY TERM SHALL BE FILLED BY THE COMMISSIONER FOR THE REMAINDER OF THE TERM.

(b) THE ADVISORY COMMITTEE SHALL ALSO REVIEW ALL RULES REGARDING THE REGULATION OF BAIL BONDING AGENTS THAT ARE PROPOSED BY THE COMMISSIONER AND MAKE RECOMMENDATIONS TO THE COMMISSIONER REGARDING THE IMPLEMENTATION OF SUCH RULES. THE COMMISSIONER SHALL CONSIDER THE RECOMMENDATIONS OF THE COMMITTEE AND MAKE THE RECOMMENDATIONS PUBLIC AND AVAILABLE FOR REVIEW.

(2) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2013.

(b) PRIOR TO SUCH REPEAL, THE ADVISORY COMMITTEE SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 2-3-1203, C.R.S.

SECTION 6. The introductory portion to 12-7-105 (1), Colorado Revised Statutes, is amended to read:

12-7-105. Reports and records required - bonding agents - division.

(1) ~~Commencing November 1, 2000,~~ Each licensed bail bonding agent shall provide a report to the division no later than November 1 of each year. Such report shall BE IN THE FORM AND MANNER THAT THE DIVISION REQUIRES AND SHALL include, but ~~is~~ SHALL not BE limited to, the following information:

SECTION 7. 12-7-106 (1) (b) and (1) (e), Colorado Revised Statutes, are amended to read:

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

(b) ~~Willful failure~~ KNOWINGLY FAILING to comply with or ~~willful violation of~~ KNOWINGLY VIOLATING any provisions of this article or of any proper order OR rule ~~or regulation~~ of the division or any court of this state WHERE THE LICENSEE KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE PROVISIONS, ORDER, OR RULE;

(e) Conviction of a felony, A GUILTY PLEA TO A FELONY, OR A PLEA OF NOLO CONTENDERE TO A FELONY within the last ten years, regardless of whether the conviction OR PLEA resulted from conduct in or conduct related to the bail bond business;

SECTION 8. 12-7-108, Colorado Revised Statutes, is amended to read:

12-7-108. Bonding agreement - place of business - records - payment schedule - disclosure statements. (1) ~~A bonding agreement~~ ALL INDEMNITY AGREEMENTS, PROMISSORY NOTES, PREMIUM AND COLLATERAL RECEIPTS, AND BOND REVOCATION AGREEMENTS shall be in writing and signed by the bail bonding agent and the ~~principal~~ DEFENDANT OR THIRD-PARTY INDEMNITOR. If the ~~principal~~ DEFENDANT OR THIRD-PARTY INDEMNITOR is illiterate or does not read the English language, such bail bonding agent shall note on the INDEMNITY agreement that he or she or a third party has read or translated the ~~bonding~~ agreement to the ~~principal~~ DEFENDANT OR THIRD-PARTY INDEMNITOR, and ~~a copy of the translation shall be attached~~ SHALL AFFIX AN AFFIDAVIT ATTESTING THAT THE DOCUMENT WAS TRANSLATED to the INDEMNITY agreement. PREMIUM RECEIPTS SHALL BE SIGNED, DATED, AND LIST THE AMOUNT OF THE BOND PAID, AND THE ORIGINAL GIVEN TO THE DEFENDANT OR THE THIRD-PARTY INDEMNITOR.

(2) EACH BAIL BONDING AGENT SHALL USE A THIRD-PARTY AGENT OR HIS OR HER OWN OFFICE FOR THE PURPOSES OF SERVICE OF PROCESS. THE NAME AND ADDRESS OF THE PLACE OF BUSINESS OF THE BAIL BOND AGENT OR AGENT OF SERVICE OF PROCESS

SHALL BE FILED WITH THE DIVISION OF INSURANCE.

(3) AS A MINIMUM REQUIREMENT FOR PERMANENT OFFICE RECORDS, EACH BAIL BONDING AGENT WHO IS ENGAGED IN THE BAIL BOND BUSINESS SHALL MAINTAIN A CURRENT AND UP-TO-DATE BOND REGISTER IN A FORM WITH SUCH CONTENT AS PRESCRIBED BY THE COMMISSIONER THAT SHALL IDENTIFY ALL BONDS OR UNDERTAKINGS EXECUTED BY THE LICENSEE.

(4) EACH BAIL BONDING AGENT WHO ACCEPTS MONEY OR ANY OTHER CONSIDERATION FOR A BOND OR UNDERTAKING SHALL, FOR EACH PAYMENT RECEIVED, GIVE TO EACH INDEMNITOR A PRENUMBERED, SIGNED RECEIPT AS EVIDENCE OF PAYMENT. THE PRENUMBERED, SIGNED RECEIPT SHALL STATE THE DATE, THE NAME OF THE DEFENDANT, A DESCRIPTION OF THE CONSIDERATION OR AMOUNT OF MONEY RECEIVED AND THE PURPOSE FOR WHICH IT WAS RECEIVED, THE NUMBER OF ANY APPLICABLE POWER-OF-ATTORNEY FORM ATTACHED TO THE BOND, THE PENAL SUM OF THE BOND, THE NAME OF THE INDEMNITOR, AND THE TERMS UNDER WHICH THE MONEY OR OTHER CONSIDERATION SHALL BE RELEASED. EACH BAIL BONDING AGENT SHALL RETAIN A DUPLICATE COPY OF EACH RECEIPT ISSUED AS PART OF THE AGENT'S RECORDS AND SHALL ACCOUNT FOR ALL OF THE PRENUMBERED RECEIPTS WHETHER THEY WERE ISSUED TO AN INDEMNITOR OR DESTROYED OR OTHERWISE NOT USED BY THE AGENT.

(5) THE BAIL BONDING AGENT SHALL KEEP AT THE PLACE OF HIS OR HER BUSINESS OR, IF USING AN AGENT FOR SERVICE OF PROCESS REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION, SHALL MAKE AVAILABLE AT THE BUSINESS OF THE AGENT FOR SERVICE OF PROCESS ALL RECORDS PERTAINING TO TRANSACTIONS MADE UNDER THE AGENT'S LICENSE AND SHALL KEEP ALL THE RECORDS AS TO ANY PARTICULAR TRANSACTION AVAILABLE AND OPEN TO INSPECTION BY THE COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE DURING NORMAL BUSINESS HOURS FOR THE THREE YEARS IMMEDIATELY AFTER THE DATE OF RELEASE OF THE BOND AND RETURN OF THE COLLATERAL, IF APPLICABLE, OR PROOF OF NOTICE TO THE DEFENDANT OR THIRD-PARTY INDEMNITOR THAT THE TERMS OF ANY PROMISSORY NOTE HAVE BEEN SATISFIED. SUCH RECORDS INCLUDE, WITHOUT LIMITATION:

(a) RECORDS OF ALL BAIL BONDS THE BAIL BONDING AGENT EXECUTES OR COUNTERSIGNS;

(b) COPIES OF ANY RECEIPTS ISSUED TO THE INDEMNITOR WHO PAYS THE MONEY FOR THE PREMIUM AND THE COLLATERAL AGREEMENT, SIGNED BY A LICENSED BAIL BONDING AGENT;

(c) AN EXECUTED AGREEMENT, SIGNED BY THE INDEMNITOR AND A LICENSED BAIL BONDING AGENT, SETTING FORTH THE AMOUNT OF BAIL SET IN THE CASE, THE NAME OF THE DEFENDANT RELEASED ON THE BOND, THE COURT CASE NUMBER, IF AVAILABLE, AND THE COURT IN WHICH THE BOND IS EXECUTED, THE PREMIUM CHARGED, THE AMOUNT AND TYPE OF COLLATERAL HELD BY THE BAIL BONDING AGENT, AND THE CONDITIONS UNDER WHICH THE COLLATERAL WILL BE RETURNED;

(d) EVIDENCE THAT THE INDEMNITOR HAS RECEIVED COPIES OF SIGNED AND DATED DISCLOSURE FORMS AS REQUIRED BY SUBSECTION (9) OF THIS SECTION; AND

(e) ANY ADDITIONAL INFORMATION THE COMMISSIONER MAY REASONABLY REQUIRE BY RULE.

(6) THE COMMISSIONER MAY EXAMINE THE BUSINESS PRACTICES, BOOKS, AND RECORDS OF ANY BAIL BONDING AGENT AS OFTEN AS THE COMMISSIONER DEEMS APPROPRIATE.

~~(7)~~ (7) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure, self-service public storage facility OR PREMIUM FINANCING FEES, no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or ~~twenty~~ FIFTY dollars, whichever is more.

~~(8)~~ (8) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing; SIGNED AND DATED BY THE BAIL BONDING AGENT, THE DEFENDANT, OR THE THIRD-PARTY INDEMNITOR, AS APPLICABLE; RETAINED BY THE BAIL BONDING AGENT, AND A COPY PROVIDED TO THE DEFENDANT OR THIRD-PARTY INDEMNITOR; and shall set forth the schedule of such payments. THE SIGNATURE OF THE BAIL BONDING AGENT SHALL NOT OBLIGATE SUCH AGENT TO PAY ANY DEBT OWED TO A THIRD-PARTY LENDER. INTEREST AND FINANCIAL CHARGES ON ANY UNPAID PREMIUM SHALL COMPLY WITH THE "UNIFORM CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF TITLE 5, C.R.S. AN INSURER, CASH BAIL BONDING AGENT, AND PROFESSIONAL CASH BAIL BONDING AGENT SHALL PAY THE APPROPRIATE PREMIUM TAX.

(9) EVERY BAIL BONDING AGENT SHALL PROVIDE, IN A FORM PRESCRIBED BY THE COMMISSIONER, A DISCLOSURE STATEMENT TO EACH DEFENDANT OR THIRD-PARTY INDEMNITOR.

(10) (a) THE BAIL BONDING AGENT MAY USE COLLATERAL RECEIVED FROM THE DEFENDANT OR THIRD-PARTY INDEMNITOR PURSUANT TO THIS ARTICLE TO SECURE THE FOLLOWING OBLIGATIONS:

(I) COMPLIANCE WITH THE BOND ISSUED ON BEHALF OF THE PRINCIPAL;

(II) ANY BALANCE DUE ON THE PREMIUM, COMMISSION, OR FEE FOR THE BOND; AND

(III) ANY RELATED COSTS INCURRED BY THE AGENT AS A RESULT OF ISSUING THE BOND.

(b) THE BAIL BONDING AGENT SHALL PROVIDE AN APPROPRIATE DISCLOSURE AND OBTAIN THE AGREEMENT OF THE DEFENDANT OR THIRD-PARTY INDEMNITOR TO USE COLLATERAL TO SECURE THE OBLIGATIONS IN PARAGRAPH (a) OF THIS SUBSECTION (10).

SECTION 9. 12-7-109 (1) (d.5) and (2), Colorado Revised Statutes, are amended to read:

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

(d.5) Except for the fee received for the bond, to fail to return any collateral or security within ten working days after receipt of a copy of the court order that results in a release of the bond by the court, UNLESS THE COLLATERAL ALSO SECURES OTHER OBLIGATIONS IN COMPLIANCE WITH SECTION 12-7-108 (10). A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written; EXCEPT THAT, IF THREE YEARS HAVE ELAPSED FROM THE DATE OF THE POSTING OF THE BOND, UNLESS A JUDGMENT HAS BEEN ENTERED AGAINST THE SURETY OR THE PRINCIPAL FOR THE FORFEITURE OF THE BOND, OR UNLESS THE COURT GRANTS AN EXTENSION OF THE THREE-YEAR TIME PERIOD FOR GOOD CAUSE SHOWN, THE BAIL BONDING AGENT, AS PRINCIPAL OR AS SURETY, SHALL BE EXONERATED AND, AT THE REQUEST OF THE PERSON WHO TENDERED THE COLLATERAL OR SECURITY, RETURN THE COLLATERAL OR SECURITY TO THE PERSON WHO POSTED THE COLLATERAL OR SECURITY WITHIN TEN BUSINESS DAYS AFTER THE THREE-YEAR TIME PERIOD. THE COMMISSIONER MAY RELEASE A LIEN AFTER THE THREE-YEAR TIME PERIOD HAS EXPIRED IF THE LIENHOLDER CANNOT BE CONTACTED AFTER AN ATTEMPT HAS BEEN MADE BY CERTIFIED MAIL AND THE ATTEMPT HAS FAILED.

(2) Any licensee who violates any provision of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. ANY CRIMINAL PENALTY PRESCRIBED IN THIS SECTION FOR A VIOLATION OF THIS ARTICLE SHALL BE IN ADDITION TO, AND NOT EXCLUSIVE OF, ANY OTHER APPLICABLE PENALTY PRESCRIBED BY LAW.

SECTION 10. 12-7-112, Colorado Revised Statutes, is amended to read:

12-7-112. Repeal - review of functions. This article is repealed, effective July 1, ~~2004~~ 2013. Prior to such repeal, the licensing functions of the commissioner and the division shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 11. Article 7 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-7-113. Insurance laws - applicability. (1) THE COMMISSIONER OF INSURANCE OR HIS OR HER DESIGNEE IS AUTHORIZED TO EXAMINE THE RELEVANT RECORDS OF ALL LICENSED BAIL BONDING AGENTS IN ORDER TO ENSURE CONSUMER PROTECTION THROUGH THE PURSUIT OF ADMINISTRATIVE COMPLIANCE ACTIONS AND ENFORCEMENT.

(2) NOT MORE THAN ONCE EVERY THREE YEARS, THE COMMISSIONER OF INSURANCE OR HIS OR HER DESIGNEE MAY EXAMINE THE RECORDS OF ALL LICENSED BAIL BONDING AGENTS FOR THE PURPOSE OF A MARKET CONDUCT EXAMINATION.

SECTION 12. 16-4-112 (5) (b) (V), Colorado Revised Statutes, is amended to read:

16-4-112. Enforcement procedures for compensated sureties. (5) Liability of bond obligors on bonds issued by compensated sureties may be enforced, without the necessity of an independent action, as follows:

(b) (V) (A) If at any time prior to the entry of judgment, the defendant appears in court, either voluntarily or in custody after surrender or arrest, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated at the time the defendant first appears in court; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(B) IF, AT A TIME PRIOR TO THE ENTRY OF JUDGMENT, THE SURETY PROVIDES PROOF TO THE COURT THAT THE DEFENDANT IS IN CUSTODY IN ANY OTHER JURISDICTION WITHIN THE STATE, THE COURT SHALL ON ITS OWN MOTION DIRECT THAT THE BAIL FORFEITURE BE SET ASIDE AND THE BOND EXONERATED; EXCEPT THAT, IF THE COURT EXTRADITES THE DEFENDANT, ALL NECESSARY AND ACTUAL COSTS ASSOCIATED WITH THE EXTRADITION SHALL BE BORNE BY THE SURETY UP TO THE AMOUNT OF THE BOND. IF THE COURT ELECTS TO EXTRADITE THE DEFENDANT, ANY FORFEITURE WILL BE STAYED UNTIL SUCH TIME THE DEFENDANT APPEARS IN THE COURT WHERE THE BOND RETURNS.

(C) A COMPENSATED SURETY SHALL BE EXONERATED FROM LIABILITY UPON THE BOND BY SATISFACTION OF THE BAIL FORFEITURE JUDGMENT, SURRENDER OF THE DEFENDANT, OR ORDER OF THE COURT. IF THE SURETY PROVIDES PROOF TO THE COURT THAT THE DEFENDANT IS IN CUSTODY IN ANY OTHER JURISDICTION WITHIN THE STATE, WITHIN NINETY DAYS AFTER THE ENTRY OF JUDGMENT, THE COURT SHALL ON ITS OWN MOTION DIRECT THAT THE BAIL FORFEITURE JUDGMENT BE VACATED AND THE BOND EXONERATED; EXCEPT THAT, IF THE COURT EXTRADITES THE DEFENDANT, ALL NECESSARY AND ACTUAL COSTS ASSOCIATED WITH THE EXTRADITION SHALL BE BORNE BY THE SURETY UP TO THE AMOUNT OF THE BOND. IF THE COURT ELECTS TO EXTRADITE THE DEFENDANT, ANY JUDGMENT WILL BE STAYED UNTIL THE TIME THE DEFENDANT APPEARS IN THE COURT WHERE THE BOND RETURNS.

SECTION 13. Repeal. 24-34-104 (34) (h), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (34) The following agencies, functions, or both, shall terminate on July 1, 2004:

(h) ~~The licensing of bonding agents through the division of insurance in accordance with article 7 of title 12, C.R.S.;~~

SECTION 14. 24-34-104 (44), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (44) The following agencies, functions, or both, shall terminate on July 1, 2013:

(g) THE LICENSING OF BAIL BONDING AGENTS THROUGH THE DIVISION OF INSURANCE IN ACCORDANCE WITH ARTICLE 7 OF TITLE 12, C.R.S.

SECTION 15. Article 7 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-7-110.5. Rate filing - rules. (1) ALL CASH AND PROFESSIONAL CASH BAIL BONDING AGENTS AND ALL SURETY COMPANIES SHALL FILE WITH THE DIVISION OF INSURANCE A SCHEDULE OF PREMIUM RATES CHARGED FOR BAIL BY THE BAIL BONDING AGENT AND SHALL FILE REVISED RATES WITH THE DIVISION WHENEVER THE RATES CHANGE.

(2) THE COMMISSIONER OF INSURANCE SHALL PROMULGATE RULES REGARDING THE RATE FILING REQUIREMENT PURSUANT TO THIS SECTION.

SECTION 16. 16-4-108 (1) (b.5) and (1) (c), Colorado Revised Statutes, are amended to read:

16-4-108. Exoneration from bond liability. (1) Any person executing a bail bond as principal or as surety shall be exonerated as follows:

(b.5) (I) When the surety appears and provides satisfactory evidence to the court that the defendant is unable to appear before the court due to such defendant's death or the detention or incarceration of such defendant in a foreign jurisdiction if the defendant is incarcerated for a period in excess of ninety days and the state of Colorado has refused to extradite such defendant; except that, if the state extradites such defendant, all costs associated with such extradition shall be borne by the surety up to the amount of the bond. ~~or~~

(II) FOR THE PURPOSES OF THIS PARAGRAPH (b.5), "COSTS ASSOCIATED WITH EXTRADITION" SHALL BE CALCULATED AS AND LIMITED TO THE ROUND-TRIP MILEAGE BETWEEN THE COLORADO COURT OF JURISDICTION AND THE LOCATION OF THE DEFENDANT'S INCARCERATION AT THE RATE ALLOWED FOR REIMBURSEMENT PURSUANT TO SECTION 24-9-104, C.R.S., UP TO THE AMOUNT OF THE BOND.

(c) Upon surrender of the defendant into custody at any time before a judgment has been entered against the sureties for forfeiture of the bond, upon payment of all costs occasioned thereby. A surety may seize and surrender the defendant to the sheriff of the county wherein the bond is taken, and it is the duty of the sheriff, on such surrender and delivery to him of a certified copy of the bond by which the surety is bound, to take the person into custody and, by writing, acknowledge the surrender. If a compensated surety is exonerated by surrendering a defendant prior to the INITIAL appearance date fixed in the bond, the court, after a hearing, may require the surety to refund part or all of the bond premium paid by the defendant if necessary to prevent unjust enrichment.

SECTION 17. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to bail bonds and undertakings executed on or after said date.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 2004