

CHAPTER 231

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 96-1078

BY REPRESENTATIVES Piffner, George, Schwarz, and Taylor;
also SENATORS Dennis, Schroeder, and Wattenberg.

AN ACT

CONCERNING THE ELIMINATION OF PROVISIONS REGULATING BAIL BONDING AGENTS FROM THE PROFESSIONS AND OCCUPATIONS STATUTES, AND, IN CONNECTION THEREWITH, THE RELOCATION OF CERTAIN PROVISIONS TO THE INSURANCE LAWS.

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

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

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

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

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

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

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

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

(5) Repealed.

SECTION 2. 12-7-102, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-102. License required - qualifications - enforcement. (1) ~~No person shall act in the capacity of a professional bonding agent or perform any of the functions, duties, or powers of the same unless that person is qualified and licensed as provided in this article.~~ NO PERSON CAN QUALIFY TO BE A BAIL BONDING AGENT UNLESS SUCH PERSON IS A LICENSED INSURANCE PRODUCER APPOINTED TO REPRESENT AN INSURANCE COMPANY UNDER ARTICLE 2 OF TITLE 10, C.R.S. HOWEVER, ANY BAIL BONDING AGENT WHO WAS LICENSED BY THE DIVISION AS OF JANUARY 1, 1992, TO WRITE BAIL BONDS AS A CASH BONDING AGENT SHALL BE PERMITTED TO CONTINUE SUCH LICENSURE UPON COMPLIANCE WITH THE OTHER REQUIREMENTS OF THIS ARTICLE.

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

(a) ~~Complied with the requirements stated in section 10-2-404 (1) and (3), C.R.S.; and~~

(b) ~~Not committed or engaged in an act described in section 12-7-106 (1).~~

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

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

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

SECTION 3. 12-7-102.5 (1), (2) (b), (3), (4), and (5), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-7-102.5. Prelicensure education requirements - exemptions. (1) As a condition of initial licensure ~~under this article~~ AND QUALIFICATION AS A BAIL BONDING AGENT, the commissioner shall require each applicant to submit evidence of satisfactory completion of an approved prelicensure education or training course. Such education or training shall consist of at least eight clock hours, two of which

shall concern the criminal court system, two of which shall concern bail bond industry ethics, and four of which shall concern the laws relating to bail bonds.

(2) Prelicensure education requirements shall not apply to a person applying for:

(b) A license ~~issued under this article~~, if such person has been licensed in another state for at least one year and has completed or satisfied prelicensure requirements which are substantially similar to those stated in subsection (1) of this section.

(3) ~~Prelicensure education courses shall be certified, registered, and reviewed by the commissioner pursuant to section 10-2-203.~~

(4) ~~An individual applying for a license under this article shall pay to the commissioner, in addition to any other applicable fees or charges, a fee established by the commissioner for the operation of the prelicensure education program.~~

(5) ~~The commissioner shall adopt all rules necessary to administer the prelicensure education requirements of this section. Such rules shall set forth the standards by which courses and programs shall qualify for approval and shall describe a system of control and reporting.~~

SECTION 4. 12-7-103, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-103. License requirements - application - qualification bond - forfeiture.

(1) Any person desiring to engage in the business of bail bonding agent in this state shall ~~apply to the division for a license on forms prepared and furnished by the division. Such application for a license or renewal thereof shall set forth, under oath, the following information~~ SUPPLY THE FOLLOWING INFORMATION TO THE DIVISION:

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

(b) Repealed.

(c) Whether the applicant has been convicted of a felony or engaged in or committed an act described in section 12-7-106 (1), during the previous ten years;

(d) Such other information including but not limited to a complete set of fingerprints certified to by an authorized law enforcement official and a full-face photograph, as may be required by this article or by the division. IN ADDITION, EACH APPLICANT SHALL PAY THE ACTUAL COSTS ASSOCIATED WITH OBTAINING ANY BACKGROUND CHECK, FINGERPRINTING, AND PHOTOGRAPH THAT MAY BE REQUIRED.

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

(3) (a) Each applicant for ~~bail bonding agent~~ WHO IS TO BE AUTHORIZED AS A CASH BONDING AGENT PURSUANT TO SECTION 12-7-102 (1) shall be required to post a qualification bond in ~~an amount not less than~~ THE AMOUNT OF fifty thousand dollars with the division. ~~The qualification bond shall meet such specifications as may be~~

~~required and approved by the division.~~ The bond shall be to the people of the state of Colorado in favor of any court in this state, whether municipal, county, district, or other court. Any qualification bond for a CASH bail bonding agent shall also be to the commissioner and the division to fulfill the purposes of this section. In the event of a forfeiture of a ~~bail~~ CASH bonding agent's qualification bond, the division shall have priority over all other claimants to such bond. Such bond shall be conditioned upon the full and prompt payment ~~on any bail bond issued by such professional bonding agent~~ into the court ordering such bond forfeited. Bail bonding agents authorized as cash bonding agents pursuant to ~~subsection (7) of this section~~ SECTION 12-7-102 (1) may only issue bonds in accordance with the provisions of section 16-4-104 (1) (b) (III), C.R.S. IN THE EVENT OF A BOND FORFEITURE, A CASH BONDING AGENT SHALL BE PROHIBITED FROM WRITING NEW BAIL BONDS UNTIL THE QUALIFICATION BOND IS RESTORED TO FIFTY THOUSAND DOLLARS.

(b) If any bond issued by a ~~bail~~ CASH bonding agent is declared forfeited, and judgment is entered thereon by a court of proper jurisdiction, AND THE JUDGMENT IS SERVED UPON THE BAIL BONDING AGENT, PERSONALLY OR BY CERTIFIED MAIL, WITHIN TEN DAYS AFTER THE ENTRY OF SAID JUDGEMENT, and the amount of the bond is not paid within a reasonable time to be determined by the court but not ~~to exceed ninety days~~ LESS THAN FORTY-FIVE DAYS OR MORE THAN NINETY DAYS, such court shall order the division to declare the qualification bond of such ~~bail~~ CASH bonding agent to be forfeited after a hearing as provided in section 12-7-106 (2). The division shall then order the ~~surety~~ CASH BONDING AGENT on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by such ~~bail~~ CASH bonding agent and declared forfeited by the court or the amount of the qualification bond, whichever is the smaller amount. The division shall suspend the license of such ~~bail~~ CASH bonding agent until such time as all forfeitures and judgments ordered and entered against the ~~bail~~ CASH bonding agent have been certified as paid or vacated by order of a court of record and another qualification bond in the required amount is posted with the division.

(c) IF ANY BOND ISSUED BY A SURETY AND BAIL BONDING AGENT IS DECLARED FORFEITED BY A COURT OF PROPER JURISDICTION, NOTICE OF ANY JUDGMENT ENTERED THEREON MUST BE SERVED UPON BOTH THE SURETY AND BAIL BONDING AGENT, PERSONALLY OR BY CERTIFIED MAIL, WITHIN TEN DAYS AFTER THE ENTRY OF SAID JUDGMENT. IF THE JUDGMENT IS NOT PAID WITHIN A REASONABLE TIME, TO BE DETERMINED BY THE COURT, BUT NOT LESS THAN FORTY-FIVE DAYS OR MORE THAN NINETY DAYS, THE COURT SHALL ORDER THE DIVISION TO SUSPEND THE LICENSE OF SAID BAIL BONDING AGENT, AFTER HEARING PURSUANT TO SECTION 10-2-801, C.R.S., UNTIL SUCH TIME AS ALL FORFEITURES AND JUDGMENTS ORDERED AND ENTERED AGAINST SAID BAIL BONDING AGENT HAVE BEEN CERTIFIED AS PAID OR VACATED BY ORDER OF A COURT OF RECORD. THE DIVISION SHALL ALSO ORDER THE SURETY ON THE BOND TO PAY THE JUDGMENT AFTER NOTICE AND HEARING PURSUANT TO SECTIONS 24-4-104 AND 24-5-105, C.R.S.

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

~~that all persons passing such examination have the minimum necessary level of competency to practice as bail bonding agents in this state.~~

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

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

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

SECTION 5. 12-7-103.5, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is repealed as follows:

12-7-103.5. Continuing education requirement - repeal. ~~(1) A bail bonding agent licensed under this article shall satisfactorily complete at least six clock hours of instruction every two years by attending courses or programs of instruction that have been approved by the commissioner. Two clock hours of such instruction shall concern bail bond industry ethics. The commissioner may adopt rules concerning tests that relate to such continuing education requirements.~~

~~(2) (a) A bail bonding agent licensed before January 1, 1995, shall complete at least six clock hours of continuing education as described in subsection (1) of this section by December 31, 1997, and an additional six clock hours of such continuing education every two years thereafter.~~

~~(b) A bail bonding agent licensed on or after January 1, 1995, shall complete at least six clock hours of continuing education as described in subsection (1) of this section by December 31 of the second full calendar year after initial licensure and an additional six clock hours of such continuing education every two years thereafter.~~

~~(c) For good cause shown, the commissioner may grant an extension of time, not to exceed one year, within which an applicant may comply with this section.~~

~~(d) An instructor of an approved course of instruction shall qualify for the same number of clock hours of continuing education as a person attending and successfully completing the course or program, but shall not receive credit more than once for a course or program given more than once during a two-year period.~~

~~(3) A bail bonding agent licensed under this article shall furnish written proof of compliance with the requirements of this section, in a form satisfactory to the commissioner.~~

~~(4) An organization sponsoring a course of continuing education, or a person acting on its behalf, shall execute written certification that a course of instruction has been completed. Such certification shall be in a form satisfactory to the commissioner.~~

~~(5) A bail bonding agent licensed under this article who fails to comply with this section, or is found after notice and the opportunity for hearing to have submitted a false or fraudulent certificate of compliance, shall have his or her license suspended until such person satisfactorily demonstrates to the commissioner that all of the requirements of this section have been met.~~

~~(6) Section 10-2-301 (6) and (7), C.R.S., shall apply with respect to the administration of the continuing education requirements for bail bonding agents licensed under this article.~~

~~(7) This section shall not apply to any bail bonding agent who was licensed by the division as of January 1, 1992, to write bail bonds as a cash bonding agent.~~

~~(8) This section is repealed, effective July 1, 2000.~~

SECTION 6. 12-7-104, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is repealed as follows:

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

SECTION 7. 12-7-104.5, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is repealed as follows:

12-7-104.5. Advisory committee - repeal. ~~(1) There is hereby created an advisory committee of four persons to advise the commissioner on issues concerning bail bonds and on complaints concerning licensees and the bail bond industry. The committee shall be composed of one bail bonding agent licensed under this article, one attorney, one person representing the division, and one company representative. The committee members shall serve without compensation but may be entitled to reimbursement for actual and necessary expenses. Appointments shall be made by the commissioner for terms of one year. Vacancies which occur during any term shall be filled by the commissioner for the remainder of such term. The advisory committee shall make recommendations to the commissioner with respect to the requirement for continuing education and the standards for qualifying courses and programs for certification for bail bonding agents licensed under this article.~~

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

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

SECTION 8. 12-7-105 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-7-105. Reports and records required - bonding agents - division. (1) Each LICENSED bail bonding agent licensed under the provisions of this article shall, under oath, ~~report semiannually~~ SHALL, UPON REASONABLE REQUEST, REPORT THE FOLLOWING INFORMATION to the division: ~~on forms prescribed by the division. The reports shall be filed with the division prior to January 31 and July 31 of each year and shall contain the following detailed information for the preceding calendar year:~~

- (a) The names of the persons for whom such bail bonding agent has become surety;
- (b) ~~The date and amount of the bonds issued by such bonding agent and the court in which such bonds were posted~~ A DESCRIPTION OF ANY BOND ACTIVITY;
- (c) ~~The fee for each bond charged by such bail bonding agent;~~
- (d) The amount of collateral or security received; ~~from insured principals or persons acting on behalf of such principals by such bail bonding agent on each bond;~~
- (e) ~~The names of all persons who are employees, partners, and associates of the bail bonding agent. Such bonding agent shall immediately report any change in the list of names to the division.~~
- (f) Such further information as the division may REASONABLY require, including, but not limited to, residence and business addresses, financial statements, and other business activities of the bail bonding agent.

SECTION 9. 12-7-106, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is 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:

- (a) ~~Any cause for which the issuance of the license could have been refused had it then existed and been known to the division;~~
- (b) (a) Failure OF A CASH BONDING AGENT to post a qualified bond in the required amount with the division during the period such person is engaged in the business within this state or, if such bond has been posted, the forfeiture or cancellation of such bond;
- (c) ~~Material misstatement, misrepresentation, or fraud in obtaining the license;~~
- (d) ~~Misappropriation, conversion, or unlawful withholding of moneys belonging to insured principals or others and received in the conduct of business under the license;~~
- (e) ~~Fraudulent or dishonest practices in the conduct of the business under the license;~~
- (f) (b) Willful failure to comply with or willful violation of any provisions of this

article or of any proper order, rule, or regulation of the division or any court of this state;

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

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

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

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

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

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

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

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

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

~~(p)~~ (i) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond.

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

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

suspend the license for such period as the commissioner may determine, unless the commissioner's order is stayed by an order of a court of competent jurisdiction.

SECTION 10. 12-7-107 (1) and (3), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

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

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The bail bonding agent shall provide such list to the surety within ~~ten~~ TWENTY days of taking the collateral. Failure to provide this written list to the surety, ~~or to~~ keep a file of all such lists FOR TWO YEARS FOLLOWING THE END OF THE CALENDAR YEAR IN WHICH EACH WAS PREPARED, or ~~to~~ provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

SECTION 11. 12-7-109 (1) (h), (1) (i), and (1) (j), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are repealed as follows:

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

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

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

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

~~(f) Without authorization from the corporate surety; or~~

~~(H) After the withdrawal of authorization by the corporate surety by such surety providing notice in writing, by certified mail, sent to the last known business address of the licensee;~~

SECTION 12. 12-7-112, Colorado Revised Statutes, 1991 Repl. Vol., is amended

to read:

12-7-112. Repeal - review of functions. This article is repealed, effective ~~July 1, 1996~~ JULY 1, 2006. 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 13. 2-3-1203 (3) (i) (VII), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is repealed as follows:

2-3-1203. Sunset review of advisory committees. (3) (i) (VII) ~~The bail bonding agents' advisory committee, appointed pursuant to section 12-7-104.5, C.R.S.;~~

SECTION 14. 16-4-104 (1) (b) (III), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

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

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

(III) By sureties worth at least one and one-half the amount of bail set in the bond or by ~~a bail bonding agent as defined in section 12-7-101 (1), C.R.S.~~ A BAIL BONDING AGENT OR A CASH BONDING AGENT QUALIFIED TO WRITE BAIL BONDS PURSUANT TO ARTICLE 7 OF TITLE 12, C.R.S.

SECTION 15. 24-34-104 (25.1) (h), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (25.1) The following functions of the specified agencies shall terminate on July 1, 1996:

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

SECTION 16. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (37) THE FOLLOWING FUNCTIONS OF THE SPECIFIED AGENCIES SHALL TERMINATE ON JULY 1, 2006: THE LICENSING OF BONDING AGENTS THROUGH THE DIVISION OF INSURANCE IN ACCORDANCE WITH ARTICLE 7 OF TITLE 12, C.R.S.

SECTION 17. 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 1, 1996