

HOUSE BILL NO. 808

INTRODUCED BY S. GUNDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO SURETY BAIL BOND INSURANCE; PROVIDING QUALIFICATIONS FOR A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING LICENSE REQUIREMENTS AND TRAINING; PROVIDING FOR THE ARREST AUTHORITY OF THE BAIL BOND SURETY INSURANCE PRODUCER PRODUCERS; REVISING SURPLUS LINES INSURANCE LAWS; REVISING RULEMAKING AUTHORITY BY THE COMMISSIONER OF INSURANCE; AMENDING SECTIONS ~~33-2-306~~, 33-17-212, 33-26-106, 33-26-108, 46-9-401, AND 46-9-510, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Special qualifications for surety bail bond insurance license.** (1)

Before approving an application for a surety bail bond insurance license, the commissioner shall verify that the individual:

- (a) is a natural person at least 21 years of age;
- (b) is a citizen of the United States or is lawfully entitled to remain and work in the United States;
- (c) has obtained a high school diploma, a general equivalency diploma or equivalent document, or an equivalent education as determined by the commissioner;
- (d) has complied with the requirements of 33-17-211; and
- (e) has successfully completed the training required in [section 2].

(2) An individual may not receive, renew, or hold a surety bail bond license if the individual:

- (a) has been convicted of a felony in this state or of any offense committed in another state that would be a felony if committed in this state; or
- (b) has been convicted of an offense involving dishonesty, a breach of trust, violence, threatened violence, or the unlawful use, sale, or possession of a controlled substance.

1 **NEW SECTION. Section 2. Surety bail bond insurance license -- basic course of training --**
2 **temporary license.** (1) Except as otherwise provided in this section, an applicant for a surety bail bond
3 insurance license shall satisfactorily complete a basic course of training for bail enforcement agents that is
4 approved by the commissioner.

5 (2) The basic course of training must consist of at least 40 hours of training that includes
6 instruction in:

7 (a) the following areas of the law:

8 (i) constitutional law;

9 (ii) procedures for arresting a defendant and surrendering a defendant into custody;

10 (iii) civil liability;

11 (iv) the civil rights of a person who is detained in custody;

12 (v) the use of force; and

13 (vi) the history and principles of bail;

14 (b) procedures for field operations, including without limitation:

15 (i) handling a person with mental illness or a person who is under the influence of alcohol or
16 a controlled substance; and

17 (ii) the care and custody of a prisoner;

18 (c) the skills required of bail enforcement agents, including without limitation:

19 (i) writing reports and completing forms;

20 (ii) methods of arrest;

21 (iii) nonlethal weapons;

22 (iv) the safe retention of weapons;

23 (v) qualifications for the use of firearms; and

24 (vi) defensive tactics; and

25 (d) the following subjects:

26 (i) first aid used in emergencies; and

27 (ii) cardiopulmonary resuscitation.

28 (3) In lieu of completing the basic course of training required by subsection (1), an applicant may

1 submit proof to the commissioner that the applicant has completed a course of training required by a municipal,
2 state, or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace
3 officer.

4 (4) An applicant for a surety bail bond insurance license shall complete the training required by this
5 section within 12 months after the date the applicant is employed by a licensed surety bail bond agent. The
6 commissioner may issue a temporary license to an applicant who has not completed the training if the applicant
7 is otherwise qualified to be issued a license as a surety bail bond agent. The temporary license:

8 (a) authorizes the applicant to act as a surety bail bond agent while employed by a licensed surety
9 bail bond agent;

10 (b) is valid for up to 12 months; and

11 (c) may not be renewed.

12

13 **NEW SECTION. Section 3. Arrest by surety bail bond insurance producer.** (1) A surety bail bond
14 insurance producer who has probable cause to believe that a principal insured by the surety insurer to which
15 the producer is appointed ~~has violated the conditions of the principal's release as set by the court, violated the~~
16 ~~bond conditions set by the surety, or failed to remain law abiding,~~ WILL FAIL TO APPEAR IN COURT, IN VIOLATION OF
17 46-9-503(2), OR HAS VIOLATED A CONDITION OF THE PRINCIPAL'S RELEASE may use reasonable force to arrest and
18 detain the principal only as described in 46-9-510 and this section.

19 (2) The producer shall:

20 (a) except under exigent circumstances, prior to and no more than 6 hours before attempting to
21 apprehend the principal, notify the local police department or sheriff's office of the intent to apprehend the
22 principal in that jurisdiction by telephoning nonemergency dispatch and providing:

23 (i) the name and producer license number of the individual who will be effecting the arrest; and

24 (ii) the name and approximate location of the principal; and

25 (b) immediately after the arrest of the principal, notify the local police department or sheriff's office
26 by telephoning nonemergency dispatch and providing:

27 (i) the name and producer license number of the individual who effected the arrest;

28 (ii) the name of the principal arrested and the description of the location of the arrest; and

1 (iii) if no notification was given under subsection (2)(a), a detailed explanation of the reasons a
2 notification could not be given.

3 (3) As used in this section, the following definitions apply:

4 (a) "Principal" means a defendant or a witness who has been admitted to bail and who is obligated
5 to appear in court as required on penalty of forfeiting bail under a commercial bail bond.

6 (b) "Surety bail bond insurance producer" or "producer" means an insurance producer who is
7 licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapters 17 and 26.

8

9 **Section 4.** Section 33-2-306, MCA, is amended to read:

10 ~~"33-2-306. Surplus lines insurance producer's authority under license -- acceptance of~~
11 ~~business from other insurance producers. (1) Under a surplus lines insurance producer's license, the~~
12 ~~licensee may place surplus lines insurance, in compliance with this part, with a foreign or alien insurer not~~
13 ~~authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for~~
14 ~~the insurer.~~

15 (2) ~~The surplus lines insurance producer may accept surplus lines insurance from a licensed~~
16 ~~insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual or~~
17 ~~business entity that has not been appointed as an insurance producer in this state and may provide~~
18 ~~compensation for the service, notwithstanding 33-17-1103.~~

19 (3) ~~(a) A surplus lines insurance producer who places or renews surplus lines insurance in~~
20 ~~accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be~~
21 ~~covered.~~

22 ~~(b) A surplus lines insurance producer who provides surety appearance bonds shall collect a~~
23 ~~minimum premium of 10% of the guaranteed amount of the surety appearance bond. Premium must be~~
24 ~~collected in full, and a receipt must be provided with the surety appearance bond and power in accordance with~~
25 ~~46-9-401. "~~

26

27 **Section 4.** Section 33-17-212, MCA, is amended to read:

28 **"33-17-212. Examination required -- exceptions -- fees.** (1) Except as provided in subsection (6),

1 an individual applying for a license is required to pass a written examination. The examination must test the
2 knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is
3 made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state.
4 The examination must be developed and conducted under rules adopted by the commissioner.

5 (2) (a) The commissioner may conduct the examination or make arrangements, including
6 contracting with an outside testing service, for administering the examination. The commissioner may arrange
7 for the testing service to recover the cost of the examination from the applicant.

8 (b) The commissioner may not charge a fee for an applicant taking an examination pertaining to
9 prepaid legal insurance. However, the commissioner may contract with an outside testing service for
10 administering the examination, and the commissioner may arrange for the testing service to recover the cost of
11 the examination from the applicant.

12 (3) An individual who fails to appear for the examination as scheduled or fails to pass the
13 examination may reapply for an examination and shall remit all forms before being rescheduled for another
14 examination.

15 (4) Except as provided in subsection (6), if the applicant is a business entity, each individual who is
16 to be named in the license as having authority to act for the applicant in its insurance transactions under the
17 license must meet the qualifications provided for in this section.

18 (5) Examination of an applicant for a license must cover only the kinds of insurance for which the
19 applicant has applied to be licensed, as constituted by any one or more of the following classifications:

20 (a) life insurance;

21 (b) disability insurance;

22 (c) property insurance, which for the purposes of this provision includes marine insurance;

23 (d) casualty insurance;

24 (e) surety insurance;

25 (f) surety bail bond insurance;

26 ~~(f)~~(g) limited lines credit insurance;

27 ~~(g)~~(h) title insurance;

28 ~~(h)~~(i) prepaid legal insurance as provided for in 33-1-215.

- 1 (6) This section does not apply to and an examination is not required of:
- 2 (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to
3 be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;
- 4 (b) an applicant for a license covering the same kind or kinds of insurance as to which the
5 applicant was licensed in this state, other than under a temporary license, within the 12 months immediately
6 preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous
7 license;
- 8 (c) an applicant for a license as a nonresident insurance producer;
- 9 (d) a limited lines travel insurance producer and those registered under the limited lines travel
10 insurance producer's license pursuant to 33-17-1402;
- 11 (e) an association applying for a license under 33-17-211; or
- 12 (f) a casualty insurance producer for the purposes of a separate exam for prepaid legal insurance
13 if the casualty insurance producer sells prepaid legal insurance as of April 26, 2013, and continues to maintain
14 a license in good standing as a casualty insurance producer.

- 15 (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident
16 insurance producer license in this state and who was previously licensed for the same lines of authority in
17 another state may not be required to complete any prelicensing education or examination.
- 18 (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the
19 other state or the individual's application is received within 90 days of the cancellation of the individual's
20 previous license and if the other state issues a certification that, at the time of the cancellation, the individual
21 was in good standing in that state or the state's database records, maintained by the national association of
22 insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees,
23 indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

24

25 **SECTION 5. SECTION 33-26-106, MCA, IS AMENDED TO READ:**

26 **"33-26-106. Cost of surety bond to be allowed in account of officer. (1)** Any court or officer whose
27 duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever
28 such person or corporation has given any such surety company as surety upon such bond, allow in the

1 settlement of such account a reasonable sum for the expense of procuring such surety.

2 (2) A surety bail bond insurance producer who provides surety appearance bonds shall collect a
3 minimum premium of 10% of the guaranteed amount of the surety appearance bond. Premium must be
4 collected in full and a receipt provided with the surety appearance bond and power in accordance with 46-9-
5 401."

6

7 **Section 6.** Section 33-26-108, MCA, is amended to read:

8 **"33-26-108. Rulemaking authority for surety insurers.** The commissioner may adopt rules
9 regarding surety insurers who sell, solicit, or negotiate commercial bail bonds and effect arrests or surrenders
10 pursuant to Title 46, chapter 9. The rules must include but are not limited to rules regarding the receipt of
11 collateral, the description of collateral received, the penalty for failure to return collateral, ~~and~~ an annual list of
12 forfeitures of bonds, and the form and manner for reporting surrenders and arrests effected under Title 46,
13 chapter 9."

14

15 **Section 7.** Section 46-9-401, MCA, is amended to read:

16 **"46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

17 (a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds,
18 certificates of deposit, or other personal property approved by the court;

19 (b) by pledging real estate situated within the state with an unencumbered equity, not exempt,
20 owned by the defendant or sureties at a value double the amount of the required bail;

21 (c) by posting a written undertaking executed by the defendant and by two sufficient sureties;

22 (d) by posting a commercial surety bond executed by the defendant and by a qualified agent for
23 and on behalf of the surety company, with proof of the full premium payment collected by surety; or

24 (e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of
25 any offense as provided in 61-5-214 and if the offender is the holder of an unexpired driver's license.

26 (2) The amount of the bond must ensure the appearance of the defendant at all times required
27 through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court
28 pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

1 ~~(3) This chapter does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a~~
2 ~~case in which the surety feels insecure in accepting liability for the defendant.~~

3 ~~(4)(3)~~ Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license
4 to the defendant:

5 (a) after the required bail has been posted or there has been a final determination of the charge;
6 and

7 (b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid
8 to the court."

9

10 **Section 8.** Section 46-9-510, MCA, is amended to read:

11 "**46-9-510. Surrender of defendant.** ~~(1) At any time before the forfeiture of bail or within 90 days after~~
12 ~~forfeiture:~~ The surety may arrest the defendant PURSUANT TO [SECTION 3]:

13 (a) before the forfeiture of bail; or

14 (b) within 90 days after the notice of forfeiture.

15 (2) The surety WHO HAS AUTHORITY TO ARREST A PERSON PURSUANT TO [SECTION 3], by written
16 authority endorsed on a certified copy of the bail bond, may empower any peace officer to make an arrest of the
17 defendant.

18 ~~(3) (a) the~~ The defendant may surrender to the court or any peace officer of this state; or-

19 ~~(b) — the~~ The surety company or a surety bail bond insurance producer licensed to sell, solicit, or
20 negotiate commercial bail bonds pursuant to Title 33, chapter 17, may arrest the defendant pursuant to [section
21 3] and surrender the defendant to the court, any peace officer, or any detention center facility of this state. Any
22 arrest or surrender made pursuant to this subsection (3) must be reported to the commissioner of insurance on
23 a form and in a manner to be determined by the commissioner.

24 (4) THE DEFENDANT MAY SURRENDER TO THE COURT OR ANY PEACE OFFICER OF THIS STATE.

25 ~~(2)(4)(5)~~ The peace officer or detention center facility shall detain the defendant in custody as
26 upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the
27 defendant. The court shall then order the bail exonerated."

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