

SENATE BILL NO. 470

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BAIL BONDS; PROVIDING ARREST AUTHORITY TO A SURETY BAIL BOND INSURANCE PRODUCER; CREATING A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING FOR APPLICATION AND TRAINING REQUIREMENTS FOR A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-306, 33-17-212, 33-26-108, 46-9-121, 46-9-401, 46-9-503, AND 46-9-510, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Arrest by surety bail bond insurance producer. (1) A surety bail bond

insurance producer who has probable cause to believe that a principal insured by the surety insurer to which the producer is appointed has violated the conditions of the principal's release as set by the court or bond conditions set by the surety or failed to remain law-abiding may use reasonable force to arrest and detain the principal only as described in 46-9-510 and this section. The producer shall:

(a) notify the local police department or sheriff's department of the intent to apprehend the principal in that jurisdiction by telephoning nonemergency dispatch and state:

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

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

(b) immediately after an arrest, notify the local police department or sheriff's department by telephoning nonemergency dispatch and state:

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

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

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

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

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

4 (b) "Surety bail bond insurance producer" or "producer" means an insurance producer who is
5 licensed to sell, solicit, or negotiate commercial bail bonds, pursuant to 33-17-101 and 33-26-101.

6

7 **NEW SECTION. Section 2. Surety bail bond insurance license.** (1)

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

10 (a) is a natural person not less than 21 years of age;

11 (b) is a citizen of the United States or is lawfully entitled to remain and work in the United States;

12 (c) has a high school diploma, a general equivalency diploma or an equivalent document, or an
13 equivalent education as determined by the commissioner;

14 (d) has complied with the requirements of 33-17-211;

15 (e) has submitted to the commissioner the results of a test to detect the presence of a controlled
16 substance in the system of the person that was administered no earlier than 30 days before the date of the
17 application for the license and is negative for the indication of the presence of any controlled substance for
18 which the person does not possess a current and lawful prescription issued in the name of the person; and

19 (f) has successfully completed the training required by [section 3].

20 (2) A person is not entitled to receive, renew, or hold a surety bail bond insurance license if the
21 person:

22 (a) has been convicted of a felony in this state or of any offense committed in another state that
23 would be a felony if committed in this state;

24 (b) has been convicted of an offense involving moral turpitude or the unlawful use, sale, or
25 possession of a controlled substance; or

26 (c) has not been a resident of the state for more than 1 year.

27

28 **NEW SECTION. Section 3. Surety bail bond insurance license -- basic course of training --**

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

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

6 (a) the following areas of the law:

7 (i) constitutional law;

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

9 (iii) civil liability;

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

11 (v) the use of force; and

12 (vi) the history and principles of bail;

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

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

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

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

18 (i) writing reports and completing forms;

19 (ii) methods of arrest;

20 (iii) nonlethal weapons;

21 (iv) the safe retention of weapons;

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

23 (vi) defensive tactics; and

24 (d) the following subjects:

25 (i) first aid used in emergencies; and

26 (ii) cardiopulmonary resuscitation.

27 (3) In lieu of completing the basic course of training required by subsection (1), an applicant may
 28 submit proof to the commissioner that the applicant has completed a course of training required by a municipal,

1 state, or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace
2 officer.

3 (4) An applicant for a surety bail bond insurance license shall complete the training required by this
4 section within 9 months after the date the applicant is employed by a licensed surety bail bond insurance agent.
5 The commissioner may issue a temporary license to an applicant who has not completed the training if the
6 applicant is otherwise qualified to be issued a license as a surety bail bond insurance agent. The temporary
7 license:

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

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

11 (c) may not be renewed.

12

13 **NEW SECTION. Section 4. Penalty for incurring forfeiture -- failing to comply with personal**
14 **recognizance.** Whoever, having been admitted to bail for appearance before any court in the state, incurs a
15 forfeiture of the bail and willfully fails to surrender within 30 days following the date of the forfeiture or purposely
16 or knowingly fails to comply with the terms of personal recognizance, is guilty of a felony and shall be
17 imprisoned in the state prison for a term not to exceed 2 years or be fined not more than \$5,000, or both.

18

19 **Section 5.** Section 33-2-306, MCA, is amended to read:

20 **"33-2-306. Surplus lines insurance producer's authority under license -- acceptance of**
21 **business from other insurance producers.** (1) Under a surplus lines insurance producer's license, the
22 licensee may place surplus lines insurance, in compliance with this part, with a foreign or alien insurer not
23 authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for
24 the insurer.

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

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

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

7

8 **Section 6.** Section 33-17-212, MCA, is amended to read:

9 **"33-17-212. Examination required -- exceptions -- fees.** (1) Except as provided in subsection (6),
 10 an individual applying for a license is required to pass a written examination. The examination must test the
 11 knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is
 12 made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state.
 13 The examination must be developed and conducted under rules adopted by the commissioner.

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

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

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

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

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

- 1 (a) life insurance;
- 2 (b) disability insurance;
- 3 (c) property insurance, which for the purposes of this provision includes marine insurance;
- 4 (d) casualty insurance;
- 5 (e) surety insurance;
- 6 (f) limited lines credit insurance;
- 7 (g) title insurance;
- 8 (h) prepaid legal insurance as provided for in 33-1-215; and
- 9 (i) surety bail bond insurance.

10 (6) This section does not apply to and an examination is not required of:

11 (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to
12 be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

13 (b) an applicant for a license covering the same kind or kinds of insurance as to which the
14 applicant was licensed in this state, other than under a temporary license, within the 12 months immediately
15 preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous
16 license;

17 (c) an applicant for a license as a nonresident insurance producer;

18 (d) a limited lines travel insurance producer and those registered under the limited lines travel
19 insurance producer's license pursuant to 33-17-1402;

20 (e) an association applying for a license under 33-17-211; or

21 (f) a casualty insurance producer for the purposes of a separate exam for prepaid legal insurance
22 if the casualty insurance producer sells prepaid legal insurance as of April 26, 2013, and continues to maintain
23 a license in good standing as a casualty insurance producer.

24 (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident
25 insurance producer license in this state and who was previously licensed for the same lines of authority in
26 another state may not be required to complete any prelicensing education or examination.

27 (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the
28 other state or the individual's application is received within 90 days of the cancellation of the individual's

1 previous license and if the other state issues a certification that, at the time of the cancellation, the individual
2 was in good standing in that state or the state's database records, maintained by the national association of
3 insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees,
4 indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."
5

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

7 **"33-26-108. Rulemaking authority for surety insurers.** The commissioner may adopt rules
8 regarding surety insurers who sell, solicit, or negotiate commercial bail bonds and effect arrests or surrenders
9 pursuant to Title 46, part 9. The rules must include but are not limited to rules regarding the receipt of collateral,
10 the description of collateral received, the penalty for failure to return collateral, ~~and~~ an annual list of forfeitures
11 of bonds, and the form and manner for reporting surrenders and arrests effected under Title 46, part 9."
12

13 **Section 8.** Section 46-9-121, MCA, is amended to read:

14 **"46-9-121. Return of bail bond after conviction.** If a commercial surety bond is posted as bail and
15 the defendant is convicted, the bond must be released and returned to the surety within 30 days after the
16 conviction. If the defendant appeals, the court may order that new bail be provided during the appeal."
17

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

19 **"46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

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

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

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

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

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

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

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

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

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

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

12

13 **Section 10.** Section 46-9-503, MCA, is amended to read:

14 **"46-9-503. Violation of release condition -- forfeiture.** (1) If a defendant violates a condition of
 15 release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the
 16 order of release. A judge ~~may issue a warrant for the arrest of a defendant charged with violating a condition of~~
 17 ~~release shall, within 10 days, issue an arrest warrant for the defendant and declare the undertaking and any~~
 18 money, property, or securities that have been deposited as bail forfeited if the defendant fails to appear. Failure
 19 to timely issue the arrest warrant or file the order and judgment of forfeiture as provided in this subsection must
 20 exonerate the bond. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

21 (2) If a defendant fails to appear before a court as required and bail has been posted, the judge
 22 may declare the bail forfeited on the day the defendant fails to appear. Notice of the order of forfeiture must be
 23 mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the
 24 bond becomes void and must be released and returned to the surety within 5 working days.

25 (3) If at any time within 90 days after the forfeiture the defendant's sureties surrender the
 26 defendant pursuant to 46-9-510 or appear and satisfactorily excuse the defendant's failure to appear, the judge
 27 shall direct the forfeiture to be discharged without penalty. If at any time within 90 days after the forfeiture the
 28 defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the

1 forfeiture to be discharged upon terms as may be just.

2 (4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration
3 or subsection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under
4 subsection (3).

5 (5) In addition to the provisions set forth in subsections (3) and (4), the bond must be exonerated
6 in any case in which:

7 (a) the defendant has been arrested outside of this state and the court record shows the
8 prosecuting attorney has declined to proceed with extradition; or

9 (b) the warrant issued by the court has not been entered into an active warrant database available
10 to law enforcement within 5 business days after the date the warrant is issued.

11 (6) If, within 90 days from receipt of the order and judgment of forfeiture from the court clerk or the
12 mailing of the notice if no receipt is made, the defendant is not returned to custody or the forfeiture has not
13 been stayed, the bondsman and, if applicable, the insurer whose risk it is shall deposit cash or other valuable
14 securities in the face amount of the bond with the court clerk 91 days from receipt of the order and judgment of
15 forfeiture from the court clerk or the mailing of the notice if no receipt is made. This provision may not apply if
16 the defendant has been returned to custody within the 90-day period and the court has failed to vacate the
17 forfeiture pursuant to subsections (3) through (5).

18 (a) After the order and judgment has been paid within 91 days from receipt of the order and
19 judgment of forfeiture from the court clerk or the mailing of the notice if no receipt is made, as required in this
20 subsection (6), the bondsman and, if applicable, the insurer whose risk it is shall have 1 year from the date
21 payment is due to return the defendant to custody as defined by this section. In the event the defendant is
22 returned to custody, the bondsman's or insurer's property must be returned provided the request for remitter be
23 made by motion filed within 1 year from the date payment is due.

24 (b) If the additional cash or securities are not deposited with the court clerk on or before the 91st
25 day after the date of service of the order and judgment of forfeiture from the court clerk or the mailing of the
26 notice if no receipt is made, then the court clerk shall notify the insurance commissioner by sending a certified
27 copy of the order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have
28 been notified by mail with return receipt requested.

1 (i) If the defendant's failure to appear was the result of the defendant's death or of being in the
 2 custody of a court other than the court in which the appearance was scheduled, the forfeiture may not lie. On
 3 proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the
 4 defendant was deceased or in the custody of another court on the day the defendant was due to appear, the
 5 bondsman's property must be returned.

6 (ii) When the defendant is in the custody of another court, the prosecuting attorney or the
 7 municipal attorney shall direct a hold order to the official, judge, court, or law enforcement agent where the
 8 defendant is in custody.

9 (iii) On a motion to the court, any person executing a bail bond as principal or surety must be
 10 exonerated after 3 years have elapsed from the posting of the bond unless a judgment has been entered
 11 against the principal or surety for the forfeiture of the bond or unless the court grants an extension of the 3-year
 12 time period for good cause shown on motion by the prosecuting attorney.

13 ~~(5)(7)~~ A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines,
 14 restitution, or violations of release conditions other than failure to appear. The original bond is in effect pursuant
 15 to 46-9-121 and is due and payable only if the surety fails, after 90 days from forfeiture, to surrender the
 16 defendant or if the defendant fails to appear on the defendant's own within the same time period."

17

18 **Section 11.** Section 46-9-510, MCA, is amended to read:

19 "**46-9-510. Surrender of defendant.** ~~(1) At any time before the forfeiture of bail or within 90 days after~~
 20 ~~forfeiture:~~

21 ~~(a) the defendant may surrender to the court or any peace officer of this state; or~~

22 ~~(b) the surety company may arrest the defendant and surrender the defendant to the court, any peace~~
 23 ~~officer, or any detention center facility of this state.~~

24 (1) (a) The surety may arrest the defendant before the forfeiture of bail or:

25 (i) within 90 days after the notice of forfeiture; or

26 (ii) within 1 year after paying a forfeiture.

27 (b) The surety, by written authority endorsed on a certified copy of the bail bond, may empower
 28 any peace officer to make an arrest of the defendant.

1 (c) The surety, by contract with a licensed bail agent, may arrest the defendant and surrender the
2 defendant to the court, any peace officer, or any detention center facility of this state.

3 (d) Notwithstanding any provision to the contrary, a licensed bondsman in this state, for the
4 purposes of apprehension and surrender of the bondsman's defendant client whose undertaking or bail contract
5 was written by the licensed bondsman, may seek assistance from or provide assistance to another licensed
6 bondsman in this state or another state, provided that the assisting bondsman:

7 (i) has held a continuously valid bail bondsman license in this state for 5 or more years
8 immediately prior to providing the assistance; or

9 (ii) is duly appointed by the same insurer as the licensed bondsman seeking assistance. The
10 bondsman licensed in this state who is seeking assistance must be required to obtain and maintain proof of the
11 valid license of the assisting bondsman and license duration requirement prior to permitting the assisting
12 bondsman to engage in any act requiring a license in this state.

13 (2) The peace officer or detention center facility shall detain the defendant in custody as upon
14 commitment and shall ~~file~~ issue a certificate, acknowledging the surrender, ~~in the court having jurisdiction of the~~
15 ~~defendant. The court shall then order the bail exonerated.~~

16 (a) The peace officer or detention facility shall accept notification of revocation in person at the
17 time of surrender by a surety, its agency, a peace officer, or via electronic communication or fax.

18 (b) The peace officer or detention facility shall return a certificate via electronic notification to the
19 surety or its agency.

20 (3) When a surety presents the certificate and a copy of the bond to the court having jurisdiction,
21 the court shall order the obligors exonerated and any money or bonds deposited as bail or payment of forfeiture
22 refunded."

23
24 NEW SECTION. Section 12. Codification instruction. (1) [Section 1] is intended to be codified as
25 an integral part of Title 46, chapter 6, and the provisions of Title 46, chapter 6, apply to [section 1].

26 (2) [Sections 2 through 4] are intended to be codified as an integral part of Title 33, chapter 17, and the
27 provisions of Title 33, chapter 17, apply to [sections 2 through 4].

28

