

1 HOUSE BILL NO. 62

2 INTRODUCED BY B. MERCER,

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BAIL BONDS;
6 CREATING A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING FOR APPLICATION AND
7 TRAINING REQUIREMENTS FOR A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING ARREST
8 AUTHORITY TO A SURETY BAIL BOND INSURANCE PROVIDER; AMENDING SECTIONS 33-17-212, 33-
9 26-108, 46-9-401, AND 46-9-510, MCA; AND PROVIDING EFFECTIVE DATES."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **NEW SECTION. Section 1. Special qualifications for surety bail bond insurance license. (1)**

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

- 16 (a) is a natural person at least 21 years of age;
- 17 (b) is a citizen of the United States or is lawfully entitled to remain and work in the United States;
- 18 (c) has obtained a high school diploma, a general equivalency diploma or equivalent document, or
19 an equivalent education as determined by the commissioner;
- 20 (d) has complied with the requirements of 33-17-211;
- 21 (e) has submitted to the commissioner the results of an examination conducted by a psychiatrist or
22 a psychologist licensed to practice in this state that indicate that the individual does not suffer from a
23 psychological condition that would adversely affect the ability of the individual to carry out the individual's duties
24 as a surety bail bond agent;
- 25 (f) has submitted to the commissioner the results of a test to detect the presence of a controlled
26 substance in the system of the individual that was administered no earlier than 30 days before the date of the
27 application for the license and is negative for the indication of the presence of any controlled substance for
28 which the individual does not possess a current and lawful prescription issued in the name of the individual; and

- 1 (g) has successfully completed the training required in [section 2].
- 2 (2) An individual may not receive, renew, or hold a surety bail bond license if the individual:
- 3 (a) has been convicted of a felony in this state or of any offense committed in another state that
- 4 would be a felony if committed in this state; or
- 5 (b) has been convicted of an offense involving moral turpitude or the unlawful use, sale, or
- 6 possession of a controlled substance.

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8 **NEW SECTION. Section 2. Surety bail bond insurance license -- basic course of training --**

9 **temporary license.** (1) Except as otherwise provided in this section, an applicant for a surety bail bond

10 insurance license shall satisfactorily complete a basic course of training for bail enforcement agents that is

11 approved by the commissioner.

12 (2) The basic course of training must consist of at least 40 hours of training that includes

13 instruction in:

14 (a) the following areas of the law:

15 (i) constitutional law;

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

17 (iii) civil liability;

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

19 (v) the use of force; and

20 (vi) the history and principles of bail;

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

22 (i) handling a person with mental illness or a person who is under the influence of alcohol or a

23 controlled substance; and

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

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

26 (i) writing reports and completing forms;

27 (ii) methods of arrest;

28 (iii) nonlethal weapons;

- (iv) the safe retention of weapons;
- (v) qualifications for the use of firearms; and
- (vi) defensive tactics; and
- (d) the following subjects:
 - (i) first aid used in emergencies; and
 - (ii) cardiopulmonary resuscitation.

(3) In lieu of completing the basic course of training required by subsection (1), an applicant may submit proof to the commissioner that the applicant has completed a course of training required by a municipal, state, or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace officer.

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

- (a) authorizes the applicant to act as a surety bail bond agent while employed by a licensed surety bail bond agent;
- (b) is valid for up to 9 months; and
- (c) may not be renewed.

NEW SECTION. Section 3. Arrest by surety bail bond insurance producer. (1) A surety bail bond insurance producer who no longer feels secure in accepting liability for a principal insured by the surety insurer to which the producer is appointed may use reasonable force to arrest and detain the principal only as described in 46-9-510 and this section. The producer shall:

- (a) except under exigent circumstances, prior to and no more than 6 hours before attempting to apprehend the principal, notify the local police department or sheriff's department of the intent to apprehend the principal in that jurisdiction by telephoning nonemergency dispatch and provide:
 - (i) the name and producer license number of the individual who will be effecting the arrest; and
 - (ii) the name and approximate location of the principal; and

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

- (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), a detailed explanation of the reasons a notification could not be given under subsection (1)(a).

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

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

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

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

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

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

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

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

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

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

(a) life insurance;

(b) disability insurance;

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

(d) casualty insurance;

(e) surety insurance;

(f) surety bail bond insurance;

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

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

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

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

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

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

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

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

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

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

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

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 5. Section 33-26-108, MCA, is amended to read:

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

Section 6. Section 46-9-401, MCA, is amended to read:

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

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

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

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

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company; or

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of

any offense as provided in 61-5-214 and if the offender is the holder of an unexpired driver's license.

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

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

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

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

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

Section 7. Section 46-9-510, MCA, is amended to read:

"46-9-510. Surrender of defendant. (1) ~~At any time before the forfeiture of bail or within 90 days after forfeiture~~ On issuance of a warrant pursuant to 46-9-503(1) or within 90 days of service of a notice or order of forfeiture on the surety pursuant to 46-9-503(2):

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

(b) ~~the surety company~~ a surety bail bond insurance producer licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapter 17, may arrest the defendant pursuant to [section 3] and surrender the defendant to the court, any peace officer, or any detention center facility of this state. Any arrest or surrender pursuant to this subsection (1) must be reported to the commissioner of insurance on a form and in a manner to be determined by the commissioner.

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

NEW SECTION. Section 8. Codification instruction. (1) [Sections 1 and 2] are intended to be

1 codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections
2 1 and 2].

3 (2) [Section 3] is intended to be codified as an integral part of Title 46, chapter 6, and the
4 provisions of Title 46, chapter 6, applies to [section 3].

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6 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

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10 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is
11 effective January 1, 2024.

12 (2) [Sections 1 and 5 through 9] and this section are effective on passage and approval.

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