

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0485.02 Jery Payne

HOUSE BILL 06-1131

HOUSE SPONSORSHIP

Stengel,

SENATE SPONSORSHIP

McElhany,

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PERSONS WHO PROVIDE SURETY TO A COURT FOR A
102 DEFENDANT THAT HAS BEEN TAKEN INTO CUSTODY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a law enforcement agency to make a determination of a defendant's probable citizen or immigration status before bond is posted on behalf of the defendant. Directs the agency to notify the bail bonding agent if the defendant is illegally in the United States. Sets standards for the type of documents that are appropriate for making the determination. Prohibits a bail bonding agent from posting bail for a defendant known to be illegally present in the United States.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Instructs the division of insurance to place the bail bonding agent's photograph on the agent's license card. Requires an agent to complete 24 hours of continuing education every 2 years. Sets continuing education standards. Directs the commissioner of insurance to not renew the license of an agent who fails to complete 24 hours of continuing education. Authorizes an interested agent to prepare and sign the documentation used by another agent in the course of posting a bond.

Authorizes a bail bonding agent to refuse to refund a portion of a paid premium when a court changes the conditions of a bond. Exonerates a surety from a bond if the court changes the conditions of the bond and the surety does not give written consent to the change.

Requires a surety to consent in writing to extend a bond beyond the 3-year limit. Exonerates a surety when a defendant is in custody in another jurisdiction and the warrant contains limitations that prevent the defendant from appearing. Repeals a provision that authorizes a court to order a portion of a paid premium refunded.

Makes a legislative declaration.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 hereby declares that all people accused of a crime for which a bail bond
4 is authorized have a right to post such bond. Nothing within this section
5 is intended to deprive any person of the right to post such bond.
6 Nevertheless, granting liberty to a defendant who is illegally in the United
7 States, who has been charged with a crime under the laws of Colorado,
8 and who shares the monetary risk with a professional bail bonding agent
9 creates an unacceptable risk of the defendant fleeing from justice.
10 Therefore, the general assembly hereby declares that, in order to protect
11 against such a flight from justice, a bail bonding agent shall not furnish
12 bail to any person who is believed to be in the United States illegally.

13 **SECTION 2.** Article 7 of title 12, Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW SECTION to read:

15 **12-7-114. Citizen or immigration status - check.** (1) (a) PRIOR
16 TO FURNISHING BAIL ON BEHALF OF A DEFENDANT FOR COMPENSATION, A

1 BAIL BONDING AGENT SHALL CONFIRM THE PROBABLE IMMIGRATION OR
2 CITIZENSHIP STATUS OF THE DEFENDANT WITH THE LAW ENFORCEMENT
3 AGENCY HAVING CUSTODY OF THE DEFENDANT. IF THE LAW
4 ENFORCEMENT AGENCY DETERMINES THAT THE DEFENDANT IS PROBABLY
5 ILLEGALLY PRESENT IN THE UNITED STATES, IT SHALL NOTIFY THE BAIL
6 BONDING AGENT, AND THE BAIL BONDING AGENT SHALL NOT FURNISH BAIL
7 FOR THE DEFENDANT.

8 (b) IF IT IS DETERMINED THAT A DEFENDANT IS ILLEGALLY PRESENT
9 IN THE UNITED STATES AFTER A BAIL BOND IS POSTED, THE COURT SHALL
10 RETURN ALL DOCUMENTS CONCERNING THE DEFENDANT THAT ARE SIGNED
11 BY THE BAIL BONDING AGENT TO THE AGENT, AND THE AGENT SHALL
12 RETURN THE FEES COLLECTED PURSUANT TO SECTION 12-7-108 (7).

13 (2) (a) A LAW ENFORCEMENT AGENCY SHALL USE AT LEAST ONE OF
14 THE FOLLOWING METHODS TO DETERMINE A DEFENDANT'S PROBABLE
15 IMMIGRATION OR CITIZENSHIP STATUS:

16 (I) A NOTIFICATION FROM THE UNITED STATES GOVERNMENT THAT
17 THE DEFENDANT IS ILLEGALLY IN THE UNITED STATES;

18 (II) A DRIVER'S LICENSE OR IDENTIFICATION CARD ISSUED
19 PURSUANT TO ARTICLE 2 OF TITLE 42, C.R.S.; OR

20 (III) AN IDENTIFICATION DOCUMENT ACCEPTED BY THE STATE OF
21 COLORADO PURSUANT TO ARTICLE 72.1 OF TITLE 24, C.R.S., INCLUDING,
22 BUT NOT LIMITED TO, THE DOCUMENTS LISTED IN PARAGRAPH (b) OF THIS
23 SUBSECTION (2).

24 (b) THE FOLLOWING DOCUMENTS, WITHOUT LIMITATION, SHALL BE
25 DEEMED TO COMPLY WITH SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS
26 SUBSECTION (2):

27 (I) A CERTIFIED BIRTH CERTIFICATE ISSUED WITHIN THE UNITED

- 1 STATES AND AN IDENTIFICATION CARD WITH A PHOTOGRAPH;
- 2 (II) A VALID MILITARY IDENTIFICATION CARD ISSUED BY THE
3 UNITED STATES GOVERNMENT;
- 4 (III) A VALID MILITARY DEPENDENT'S IDENTIFICATION CARD
5 ISSUED BY THE UNITED STATES GOVERNMENT;
- 6 (IV) A VALID NATIVE AMERICAN TRIBAL IDENTIFICATION
7 DOCUMENT WITH A PHOTOGRAPH;
- 8 (V) A CERTIFICATE OF UNITED STATES CITIZENSHIP, FORM N-560
9 OR N-561;
- 10 (VI) A CERTIFICATE OF NATURALIZATION, FORM N-550 OR N-570;
- 11 (VII) A PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT;
- 12 (VIII) A VALID FOREIGN PASSPORT SHOWING LAWFUL PRESENCE
13 IN THE UNITED STATES;
- 14 (IX) A PERMANENT RESIDENT CARD OR ALIEN REGISTRATION
15 RECEIPT CARD WITH PHOTOGRAPH, FORM I-551;
- 16 (X) AN UNEXPIRED TEMPORARY RESIDENT CARD, FORM I-688;
- 17 (XI) AN UNEXPIRED EMPLOYMENT AUTHORIZATION CARD, FORM
18 I-688A;
- 19 (XII) AN UNEXPIRED REENTRY PERMIT, FORM I-327;
- 20 (XIII) AN UNEXPIRED REFUGEE TRAVEL DOCUMENT, FORM I-571;
- 21 OR
- 22 (XIV) AN UNEXPIRED EMPLOYMENT AUTHORIZATION DOCUMENT,
23 FORM I-688A.

24 **SECTION 3.** 12-7-102 (5), Colorado Revised Statutes, is
25 amended to read:

26 **12-7-102. License required - qualifications - enforcement.**

27 (5) The division shall prepare and deliver to each licensee a pocket card

1 showing the name, address, ~~and~~ classification, AND PHOTOGRAPH of such
2 licensee. Such pocket card shall clearly state that such person is a
3 licensed bonding agent.

4 **SECTION 4.** 12-7-103.5, Colorado Revised Statutes, is
5 RECREATED AND REENACTED, WITH AMENDMENTS, to read:

6 **12-7-103.5. Continuing education requirement.** (1) (a) A BAIL
7 BONDING AGENT SHALL COMPLETE TWENTY-FOUR HOURS OF CONTINUING
8 EDUCATION BIENNIALLY. EACH SUCH BIENNIUM SHALL RUN
9 CONCURRENTLY WITH THE BAIL BONDING AGENT'S LICENSING PERIOD.

10 (b) THIS SUBSECTION (1) SHALL NOT APPLY DURING THE INITIAL
11 PERIOD OF LICENSURE.

12 (c) UPON A SHOWING OF GOOD CAUSE, THE COMMISSIONER MAY
13 GRANT AN EXTENSION OF TIME, NOT TO EXCEED ONE YEAR, TO COMPLY
14 WITH THIS SUBSECTION (1).

15 (2) A CONTINUING EDUCATION COURSE SHALL BE APPROVED BY
16 THE COMMISSIONER PURSUANT TO SECTION 10-2-301, C.R.S., IN ORDER TO
17 QUALIFY FOR CONTINUING EDUCATION CREDIT.

18 (3) AN INSTRUCTOR OF A QUALIFIED COURSE OF INSTRUCTION
19 SHALL QUALIFY FOR CONTINUING EDUCATION CREDIT EQUAL TO THAT OF
20 A PERSON SUCCESSFULLY COMPLETING THE COURSE, BUT SHALL NOT
21 RECEIVE CREDIT FOR A SINGLE COURSE MORE THAN ONCE EVERY TWO
22 YEARS.

23 (4) A BAIL BONDING AGENT SHALL FURNISH EVIDENCE OF
24 COMPLIANCE WITH THIS SECTION IN A MANNER AND FORM DETERMINED BY
25 THE COMMISSIONER.

26 (5) THE COMMISSIONER SHALL REFUSE TO RENEW THE LICENSE OF
27 A BAIL BONDING AGENT WHO FAILS TO COMPLY WITH THIS SECTION.

1 **SECTION 5.** 12-7-108 (1), (7), and (8), Colorado Revised
2 Statutes, are amended to read:

3 **12-7-108. Bonding agreement - place of business - records -**
4 **payment schedule - disclosure statements.** (1) All indemnity
5 agreements, promissory notes, premium and collateral receipts, and bond
6 revocation agreements shall be in writing and signed by ~~the~~ ANY
7 INTERESTED bail bonding agent and the defendant or third-party
8 indemnitor. If the defendant or third-party indemnitor is illiterate or does
9 not read the English language, such bail bonding agent shall note on the
10 indemnity agreement that he or she or a third party has read or translated
11 the agreement to the defendant or third-party indemnitor, and shall affix
12 an affidavit attesting that the document was translated to the indemnity
13 agreement. Premium receipts shall be signed, be dated, and list the
14 amount of the bond paid, and the original given to the defendant or the
15 third-party indemnitor.

16 (7) Except for bond filing fees charged by a court or law
17 enforcement agency and the actual cost of storing collateral in a secure,
18 self-service public storage facility or premium financing fees, ~~no~~ A bail
19 bonding agent licensed under this article shall charge for such bail
20 bonding agent's premium, commission, or fee ~~an amount more than~~
21 EITHER fifteen percent of the amount of bail furnished by such bonding
22 agent or fifty dollars, whichever is more.

23 (8) An arrangement for the payment of all or part of the premium,
24 commission, or fee paid to a bail bonding agent licensed under this article
25 shall be in writing; signed and dated by ~~the~~ ANY INTERESTED bail bonding
26 agent, the defendant, or the third-party indemnitor, as applicable; retained
27 by the bail bonding agent, and a copy provided to the defendant or

1 third-party indemnitor; and shall set forth the schedule of such payments.
2 The signature of the bail bonding agent shall not obligate such agent to
3 pay any debt owed to a third-party lender. Interest and financial charges
4 on any unpaid premium shall comply with the "Uniform Consumer Credit
5 Code", articles 1 to 9 of title 5, C.R.S. An insurer, cash bail bonding
6 agent, and professional cash bail bonding agent shall pay the appropriate
7 premium tax.

8 **SECTION 6.** 16-4-107 (1), Colorado Revised Statutes, is
9 amended to read:

10 **16-4-107. Reduction or increase of bail - change in type of**
11 **bond.** (1) (a) Upon application by the district attorney or the defendant,
12 the court before which the proceeding is pending may increase or
13 decrease the amount of bail, may require additional security for a bond,
14 may dispense with security theretofore provided, or may alter any
15 condition of the bond.

16 (b) A SURETY SHALL BE EXONERATED FROM A BOND IF THE COURT
17 CHANGES ANY CONDITION OF A BOND AND THE SURETY DOES NOT GIVE
18 WRITTEN CONSENT TO THE CHANGE.

19 (c) A CHANGE IN THE CONDITIONS OF A BOND SHALL NOT SUBJECT
20 A PROFESSIONAL SURETY TO A REFUND OF ANY PORTION OF A PAID
21 PREMIUM.

22 **SECTION 7.** 16-4-108 (1) (e) and (1.5), Colorado Revised
23 Statutes, are amended, and the said 16-4-108 (1) is further amended BY
24 THE ADDITION OF A NEW PARAGRAPH, to read:

25 **16-4-108. Exoneration from bond liability.** (1) Any person
26 executing a bail bond as principal or as surety shall be exonerated as
27 follows:

1 (e) After three years have elapsed from the posting of the bond,
2 unless:

3 (I) A judgment has been entered against the surety or the principal
4 for the forfeiture of the bond; or

5 (II) ~~unless~~ The court grants an extension of the three-year time
6 period for good cause shown, upon motion by the prosecuting attorney,
7 AND THE SURETY CONSENTS IN WRITING TO THE EXTENSION; OR

8 (f) WHEN THE SURETY APPEARS AND PROVIDES SATISFACTORY
9 EVIDENCE TO THE COURT THAT THE DEFENDANT IS UNABLE TO APPEAR
10 BEFORE THE COURT BECAUSE THE STATE HAS PLACED A LIMIT ON THE
11 WARRANT FOR THE ARREST OF THE DEFENDANT THAT CAUSES THE
12 DEFENDANT TO NOT APPEAR.

13 ~~(1.5) If, within ten working days after the posting of a bond by a~~
14 ~~defendant, the terms and conditions of said bond are changed or altered~~
15 ~~either by order of court or upon the motion of the district attorney or the~~
16 ~~defendant, the court, after a hearing, may order a compensated surety to~~
17 ~~refund a portion of the premium paid by the defendant, if necessary, to~~
18 ~~prevent unjust enrichment. If more than ten working days have elapsed~~
19 ~~after posting of a bond by a defendant, the court shall not order the refund~~
20 ~~of any premium.~~

21 **SECTION 8. Effective date - applicability.** (1) This act shall
22 take effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly that is
24 allowed for submitting a referendum petition pursuant to article V,
25 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
26 die is on May 10, 2006); except that, if a referendum petition is filed
27 against this act or an item, section, or part of this act within such period,

1 then the act, item, section, or part, if approved by the people, shall take
2 effect on the date of the official declaration of the vote thereon by
3 proclamation of the governor.

4 (2) This act shall apply to bail bonds executed on or after the
5 applicable effective date of this act.