Dear Senators ANDREASON, Coiner & Malepeai, and
Representatives BLACK, Henderson & Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Dept. of Insurance:

IDAPA 18.01.04 - Rules Pertaining to Bail Agents - New Chapter (Docket #18-0104-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-29-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-30-10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.

Legislative Services Office
Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce and Human Resources Committee and the House Business Committee

FROM: Brooke Murdoch, Research Analyst BM

DATE: October 12, 2010

SUBJECT: Idaho Department of Insurance

IDAPA 18.01.04 – Rules Pertaining to Bail Agents
(Docket No. 18-0104-1001 – New Chapter)

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.04 – Rules Pertaining to Bail Agents. The Department's proposed rulemaking constitutes a new chapter and is prompted by Senate Bill No. 1371 that was passed by the 2010 Legislature. Senate Bill No. 1371 amended Section 41-1039, Idaho Code, granting the Director of the Department the exclusive authority to license bail bond agents in Idaho. According to the Department, the proposed rule identifies the grounds for suspension of a bail agent's license. The proposed rule also sets forth the following: notification requirements, the prohibition against stacking bonds, permissible bail agent charges and fees, requirements relating to the financing of bail bond premiums and requirements relating to the payment of a claim for forfeiture.

Formal negotiated rulemaking was not conducted because the rule was drafted in consultation with bail industry representatives. There is no negative fiscal impact to the general fund resulting from this rulemaking.

Section 013.02 of the proposed rule (page 345) specifies the grounds for license suspension. Although Section 013.02 references Section 41-1039(4), Idaho Code, we note that it is in Section 41-1039(5), Idaho Code, where the Department's relevant rulemaking authority is provided. Section 41-1039(5), Idaho Code, grants the Director the **discretionary authority** to suspend a license pursuant to reasons set forth in the Department's rules, whereas the provisions of Section 41-1039(4), Idaho Code, specify the reasons for which the Director **shall suspend** a license. Section 013.02 of the proposed rule contains language that largely mirrors that contained in Code Section 41-1039(4)(a). In other words, the statutory reasons for **requiring** the director to suspend a license are largely the same as the reasons listed in the proposed rule for **allowing** the director to suspend a license. The only difference between the proposed rule and

the statute is that the rule provides for the suspension of a license for "[a] criminal conviction or guilty plea, **including a withheld judgment or plea of nolo contendere**...." The statute does not include this bolded language.

We contacted Shad Priest, Deputy Director of the Department, for clarification. Mr. Priest agreed that the intended purpose of Section 013.02 is unclear and that he would seek input from the interested parties. In sum, we suggest that Section 013.02 of the proposed rule either be removed or rewritten so as to avoid confusion.

Aside from the above comments, the proposed rule is within the authority granted to the Department in Sections 41-211 and 41-1039, Idaho Code.

cc: Idaho Department of Insurance
Shad Priest, Deputy Director
Dale Freeman

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.04 - RULES PERTAINING TO BAIL AGENTS

DOCKET NO. 18-0104-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 10 Title 41 Section 41-1039(5) Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 41-1039, Idaho Code was amended the 2010 Legislature to include a requirement that the Department of Insurance to set forth in rules reasons for immediate suspension of a bail agent license. This rulemaking identifies grounds for immediate suspension of a bail agent license and also clarifies the duties and responsibilities of bail agents doing business in Idaho.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with bail industry representatives and drafts were made available to interested parties.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dale Freeman (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Shad Priest
Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0104-1001

IDAPA 18
TITLE 01
CHAPTER 04

18.01.04 - RULES PERTAINING TO BAIL AGENTS

000. LEGAL AUTHORITY.
This rule is promulgated pursuant to the authority vested in the director under Sections 41-211 and 41-1037 through 41-1045, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.04, "Rules Pertaining to Bail Agents." ( )

02. Scope. The provisions of this rule shall apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the department and provisions of title 41, Idaho Code, applicable to insurance producers shall also apply to bail agents. ( )

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ( )

003. ADMINISTRATIVE APPEALS.
All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General - General provisions." ( )

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ( )

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

03 Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ( )

04. Web Site Address. The department's web address is http://www.doi.idaho.gov. ( )

006. PUBLIC RECORDS COMPLIANCE.
Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

007. -- 011. (RESERVED).

012. NOTIFICATION REQUIREMENTS.

01. Notice of Changes Required. A bail agent licensed pursuant to Section 41-1039, Idaho Code, shall immediately notify the Department of Insurance in writing of any the following: ( )

a. Change of bail agent's name; ( )

b. Change of bail agent's current business address; ( )

c. Change of bail agent's current business phone number or business e-mail address if any; ( )

d. Change of name or address of any surety insurance company for which the bail agent has an active appointment; ( )

e. Cancellation by a surety insurance company of a bail agent's authority to write bonds for that company; ( )

f. Any new affiliation with a bail bond agency; ( )

g. Cancellation of a bail agent's affiliation with a bail agency; ( )

02. Notice of Legal Proceedings Required. A bail agent shall provide immediate written notice to the Department of Insurance of the filing of any criminal charges against the bail agent. In addition to the foregoing, a bail agent shall provide immediate written notice to the Department of Insurance of any material change in circumstances that would require a different answer than previous provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration. Upon request by the department, the bail agent shall provide copies of all relevant legal documents relating to the matter and any additional relevant information requested. ( )

013. CRIMINAL HISTORY CHECKS.

01. Criminal History Check Required. All licensed bail agents must obtain a criminal history records check in connection with the renewal of a bail agent's license and shall bear all costs associated with the records check. ( )

02. Grounds for Immediate Suspension. A criminal conviction or guilty plea, including a withheld judgment or plea of nolo contendere, to any felony, or to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public shall be considered conduct which poses a substantial threat of serious harm to the public and grounds for an immediate suspension of the bail agent's license pursuant to Section 41-1039(4), Idaho Code. The immediate suspension shall be in addition to any proceeding instituted by the director seeking penalties pursuant to Section 41-1016, Idaho Code. ( )

014. STACKING OF BONDS PROHIBITED.

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power shall be equal to or greater than the amount of the bail or bond set by the court in the case for which the bond and power are being submitted. A bail agent shall not attempt to "stack" bonds or powers by submitting more than one (1) power of attorney for any single bond. ( )

015. NOTIFICATION TO SURETY OF FORFEITURE.

A bail agent shall notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court. ( )

016. ALLOWABLE BAIL AGENT CHARGES AND FEES.

01. **Charges for Bail Transaction**. A bail agent shall not directly or indirectly impose or seek to impose any fees or charges except for those permitted under Section 41-1042, Idaho Code, as a part of any application, issuance, effectuation or continuation of a bail bond. ( )

02. **Charges for Additional Services**. Charges and fees outside the scope of Section 41-1042, Idaho Code, such as charges for returning a defendant to custody after a breach of the bail bond contract, must be negotiated separately after the bail bond has been effectuated. Negotiations for additional charges shall not be entered into as a part of the application, issuance and effectuation of a bail bond and shall not be a condition of or requirement for entering into or continuing a bail bond contract. Any fees or charges that are negotiated separately shall be reasonable in relation to the expenses or services for which the fee or charge is imposed and must be accompanied by a statement that clearly explains that any agreement to pay fees or charges is not a requirement or condition to the validity of the existing bail bond. ( )

03. **Collateral**. Collateral accepted in connection with the bail bond transaction shall be used solely for reimbursement of penal amounts paid to the courts in the case of forfeiture of the bail bond. ( )

017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.

01. **Written Agreement Required**. No credit may be extended by any bail agent or surety insurance company for the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium must contain at a minimum the following: ( )

a. The names of the parties to the credit agreement; ( )

b. The amount of premium financed; ( )

c. The per annum rate of interest; ( )

d. The scheduled premium payment dates; and ( )

e. Signatures and dates of signatures of all parties to the credit agreement. ( )

02. **Early Surrender for Failure to Pay**. If failure to pay premiums due under a credit arrangement may result in the early surrender of the defendant, that fact must be clearly set forth in the written credit agreement. Early surrender for failure to make premium or interest payments when due must be handled in accordance with Section 41-1044, Idaho Code, and neither the bail agent nor the surety shall be entitled to seek recovery of any amounts unpaid as of the date of surrender. ( )

03. **Collateral for Credit Agreement**. If the credit agreement is to be collateralized, the collateral must not be excessive in relation to the amount of premium financed, must be separate and apart from any collateral used in the bail bond transaction, must be described in the credit agreement or in an attachment to the agreement, and must be handled in accordance with Section 41-1043, Idaho Code. ( )

018. PAYMENT OF FORFEITURE.
It is a violation of Section 41-1329(6), Idaho Code, for a bail surety to intentionally, or with such frequency as to indicate a general business practice, fail to pay a claim for forfeiture after liability for payment has become reasonably clear. Liability for payment upon forfeiture is reasonably clear when a defendant has not appeared or has not been brought before the court within 180 days after the entry of the order of forfeiture, and a motion to set aside the forfeiture, in whole or in part, has not been filed with the court within that time period. ( )

019. SEVERABILITY.
If any provision of this Rule is for any reason held to be invalid, the remainder of the Rule shall not be affected thereby. ( )

020. -- 999. (RESERVED).