

IN THE SENATE

SENATE BILL NO. 1371

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PRODUCER LICENSING; AMENDING SECTION 41-1037, IDAHO CODE, TO  
2 PROVIDE LEGISLATIVE FINDINGS AND PURPOSE RELATING TO BAIL AGENTS;  
3 AMENDING SECTION 41-1038, IDAHO CODE, TO PROVIDE DEFINITIONS AND TO  
4 FURTHER DEFINE TERMS; AMENDING SECTION 41-1039, IDAHO CODE, TO REVISE  
5 REQUIREMENTS AND AUTHORITY RELATING TO THE LICENSING OF BAIL AGENTS;  
6 AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW  
7 SECTION 41-1039A, IDAHO CODE, TO PROVIDE NOTICE REQUIREMENTS; AMENDING  
8 SECTION 41-1040, IDAHO CODE, TO CLARIFY THE DEPARTMENT OF INSURANCE'S  
9 RESPONSIBILITY RELATING TO A SURETY PERFORMANCE BOND; AND AMENDING  
10 SECTION 19-2918, IDAHO CODE, TO PROVIDE A PROCEDURE TO STAY A CERTAIN  
11 OBLIGATION, TO GRANT THE ADMINISTRATIVE DISTRICT JUDGE AUTHORITY TO  
12 ORDER THE SHERIFFS AND CLERKS OF CERTAIN COUNTIES NOT TO ACCEPT THE  
13 POSTING OF NEW BAIL BONDS FROM CERTAIN SURETY INSURANCE COMPANIES  
14 AND TO PROVIDE A PROCESS AND REQUIREMENTS FOR ADDRESSING A POTENTIAL  
15 SUSPENSION OF A BAIL AGENT'S LICENSE.  
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 41-1037, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 41-1037. REQUIREMENTS FOR BAIL AGENTS -- FINDINGS -- PURPOSE. (1)  
21 Sections 41-1037 through 41-1045, Idaho Code, provide requirements for the  
22 regulation of bail agents in this state in addition to the requirements  
23 generally applicable to producers under this chapter.

24 (2) The legislature finds that:

25 (a) Bail agents provide an important local retail service to the retail  
26 consumers of bail bonds;

27 (b) Retail consumers of bail bonds and bail agents require a uniform and  
28 consistent regulatory framework that governs retail bail practices;  
29 and

30 (c) There is a need to provide consumer protection from unscrupulous  
31 and unfair practices.

32 (3) The purpose of this chapter is to provide that the department shall  
33 uniformly and exclusively license bail agents throughout the state of Idaho  
34 and that the department shall regulate such agents and bail transactions,  
35 provided the supreme court shall retain its inherent authority to regulate  
36 the transaction of bail with the court, including promulgating rules and  
37 uniform guidelines.

38 SECTION 2. That Section 41-1038, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

1 41-1038. DEFINITIONS. As used in sections 41-1037 through 41-1045,  
2 Idaho Code:

3 (1) "Bail" means a monetary amount required by the court to release the  
4 defendant from custody and to ensure his appearance in court as ordered.

5 (2) "Bail agent" means a person who is a licensed producer in the line of  
6 surety insurance that is authorized by an insurer to execute or countersign  
7 undertakings of bail in connection with judicial proceedings.

8 (3) "Bail bond" means a financial guarantee, posted by a bail agent and  
9 underwritten by a surety insurance company, that the defendant will appear  
10 as ordered.

11 (24) "Collateral" means property of any kind given as security to  
12 obtain a bail bond.

13 (35) "Department" means the department of insurance.

14 (46) "Director" means the director of the department of insurance.

15 (7) "Person" means an individual or a business entity.

16 (8) "Retail consumers of bail bonds" means a defendant and any person  
17 who provides collateral to obtain any portion of a bail bond.

18 (9) "Surety" or "surety insurance company" means an admitted insurer  
19 authorized in the line of surety pursuant to title 41, Idaho Code.

20 SECTION 3. That Section 41-1039, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 41-1039. LICENSE REQUIRED. (1) No person shall hold himself out to be  
23 a bail agent or sell, solicit, negotiate, advise or consult regarding the  
24 terms of bail bond contracts in this state unless that person is licensed as  
25 a producer in the line of surety insurance. The director is vested with the  
26 exclusive authority to license bail agents and the authority to regulate the  
27 solicitation, negotiation and transaction of bail with retail consumers of  
28 bail bonds, provided however, that a court retains the authority to refuse  
29 to accept bail bonds from a surety or a bail agent pursuant to its inherent  
30 authority, pursuant to Idaho Code, or as provided by supreme court rules,  
31 guidelines or appellate decisions.

32 (2) A bail agent is authorized to execute and countersign undertakings  
33 of bail, including bail bonds, in connection with any judicial proceedings  
34 in each of the judicial districts of the state. Any sheriff or clerk of  
35 the district court shall accept bail bonds only from a bail agent, unless  
36 otherwise ordered by the court pursuant to subsection (1) of this section.

37 (3) A bail agent's license filed with the clerk of the district court is  
38 deemed proof that such bail agent is licensed pursuant to this chapter.

39 (4) In addition to the authority to revoke, suspend or refuse to issue a  
40 bail agent's license pursuant to section 41-1016, Idaho Code, the director  
41 shall suspend a license for a period not to exceed six (6) months, after  
42 mailing notice to the last known address of the bail agent but prior to a  
43 hearing, if such bail agent:

44 (a) Has been convicted or has entered a guilty plea to any felony or to a  
45 misdemeanor which evidences bad moral character, dishonesty, a lack of  
46 integrity and financial responsibility, or an unfitness and inability  
47 to provide acceptable service to the consuming public; or

48 (b) Intentionally and fraudulently makes a false statement to a court  
49 in connection with a bail transaction.

1       (5) In addition to the provisions of subsection (4) of this section, the  
2 director may also suspend a license for a period not to exceed six (6) months,  
3 after mailing notice to the last known address of the bail agent but prior to  
4 a hearing, for reasons set forth in the rules of the department.

5       SECTION 4. That Chapter 10, Title 41, Idaho Code, be, and the same is  
6 hereby amended by the addition thereto of a NEW SECTION, to be known and  
7 designated as Section 41-1039A, Idaho Code, and to read as follows:

8       41-1039A. NOTICE. In the event that the director revokes or suspends  
9 a bail agent's license or a surety's certificate of authority, or lifts  
10 such revocation or suspension, the director shall immediately notify all  
11 judicial district trial court administrators and all sureties with whom the  
12 agent is appointed of the effective date of such revocation or suspension or  
13 of the lifting of such revocation or suspension.

14       SECTION 5. That Section 41-1040, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16       41-1040. BOND REQUIRED. After January 1, 2004, a producer shall not  
17 act as a bail agent unless the producer first files with the department  
18 and thereafter maintains in force a surety performance bond, executed by  
19 an authorized surety insurer, in favor of the director in the amount of  
20 fifteen thousand dollars (\$15,000). Such bond shall be held in trust for the  
21 benefit and protection of the public against a judicial or administrative  
22 determination by the department of loss by acts of fraud or dishonesty by the  
23 bail agent.

24       SECTION 6. That Section 19-2918, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26       19-2918. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL. (1) The person  
27 posting bail shall pay to the clerk of the court the amount of bail ordered  
28 within five (5) business days after the expiration of the one hundred eighty  
29 (180) day period following the order of forfeiture of bail unless:

30       (a) The order of forfeiture has been set aside by the court;

31       (b) The bail has been exonerated by the court; or

32       (c) A motion to set aside the order of forfeiture or a motion to  
33 exonerate bail has been timely filed, together with a request for  
34 hearing, and has not been decided by the court. If the motion is decided  
35 and denied by the court more than one hundred eighty (180) days after the  
36 order of forfeiture, then the person posting bail shall pay the amount  
37 of bail to the clerk of the court within five (5) business days after the  
38 entry of the court's order denying the motion. A timely filed notice of  
39 appeal and motion to stay the forfeiture stays the obligation to remit  
40 payment until five (5) business days after the entry of the court's  
41 order denying the motion to stay or, in the event such motion is granted,  
42 five (5) business days following the final determination of the appeal.

43       (2) If cash is deposited in lieu of bail, the clerk of the court shall  
44 pay the cash deposit to the county treasurer. If the person posting a bail  
45 bond or property bond that has been forfeited does not pay the amount of bail

1 within the time provided in this section, then the order of forfeiture shall  
2 become a judgment against the person posting the bail bond or property bond.

3 (3) After the notice required by section 19-2915, Idaho Code, in the  
4 event that a surety insurance company fails to pay the amount of any bail  
5 forfeited within the time required by this section, the administrative  
6 district judge may order the sheriffs and clerks of all counties in the  
7 judicial district not to accept the posting of any new bail bonds from such  
8 company until the amount of bail forfeited has been paid. An administrative  
9 district judge in another district may also order the sheriffs and clerks of  
10 all counties in his district not to accept the posting of any new bail bonds  
11 from such company until the amount of bail forfeited has been paid.

12 (4) If the administrative district judge has reasonable cause to  
13 believe that a bail agent has committed any of the actions that could form  
14 the basis for a suspension of the bail agent's license pursuant to section  
15 41-1039(4), Idaho Code, the court shall immediately refer the matter to  
16 the director of the department of insurance for appropriate disciplinary  
17 action pursuant to sections 41-1016 and 41-1039, Idaho Code, and may enter an  
18 order that the sheriffs and clerks of all counties in the judicial district  
19 shall not accept bail bonds submitted by that bail agent until the director  
20 has rendered a decision as to whether to suspend the bail agent's license  
21 pursuant to section 41-1039(4), Idaho Code. The director shall immediately  
22 notify all judicial district trial court administrators of such decision.