

Dear Senators TIPPETS, Patrick, Schmidt, and
Representatives HENDERSON, Thompson, Smith:

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

IDAPA 18.01.04 - Rules Pertaining to Bail Agents (Docket No. 18-0104-1301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen 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 10/03/2013. 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 11/01/2013.

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 on the
memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee
FROM: Senior Legislative Research Analyst - Ryan Bush
DATE: September 16, 2013
SUBJECT: Department of Insurance

IDAPA 18.01.04 - Rules Pertaining to Bail Agents (Docket No. 18-0104-1301)

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.04 - Rules Pertaining to Bail Agents. This rulemaking deletes Section 016, Allowable Bail Agent Charges and Fees, from Rule 18.01.04. The Department states that this is being done to conform the rule to the interpretation of Section 41-1042, Idaho Code, consistent with the Idaho Supreme Court's holding in *Two Jinn v. Idaho Department of Insurance* (2013). The Court held in *Two Jinn v. Idaho Department of Insurance* that Section 016 of the rule contravened the plain text of Section 41-1042, Idaho Code, by prejudicing a bail bond company's right to contract with a client to indemnify the company for the cost of apprehending a defendant who jumps bail.

The Department states that negotiated rulemaking was conducted and the Notice of Intent to Promulgate Rules was published in the July 3, 2013, Idaho Administrative Bulletin, Volume 13-7, page 64. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be consistent with Section 41-1042, Idaho Code, and *Two Jinn v. Idaho Department of Insurance* (2013) and within the statutory authority granted to the Department in Section 41-211, Idaho Code.

cc: Department of Insurance
Thomas A. Donovan
Dale Freeman

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.04 - RULES PERTAINING TO BAIL AGENTS

DOCKET NO. 18-0104-1301

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 Section, 41-211, 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 September 18, 2013.

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:

This rulemaking will delete Section 016 from Rule 18.01.04 to conform the rule to the interpretation of Section 41-1042, Idaho Code, consistent with the Idaho Supreme Court's holding in *Two Jinn v. Idaho Department of Insurance*, 154 Idaho 1, 293 P.3d 150 (2013).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013, Idaho Administrative Bulletin, [Volume 13-7, page 64](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Donovan, at 208-334-4214, or tom.donovan@doi.idaho.gov or Dale Freeman at 208-334-4321, dale.freeman@doi.idaho.gov.

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 September 25, 2013.

DATED this 8th day of August, 2013.

Thomas A. Donovan
Deputy Director
Idaho Department of Insurance
700 W. State St – 3rd floor
Boise ID 83720
208-334-4214
208-334-4398 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0104-1301

016. ~~ALLOWABLE BAIL AGENT CHARGES AND FEES. (RESERVED)~~

~~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. (4-7-11)~~

~~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. (4-7-11)~~

~~03. **Collateral.** Except as provided in Section 017.03 of this rule, 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. (4-7-11)~~