



Insurance Department

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

TODD E. KISER
Commissioner

Bail Bond Oversight Board Meeting

(http://www.insurance.utah.gov/producers/bailbond_board.html)

Date: October 14, 2015

Time: Noon

Place: East Building, Copper Room

Board Members

xBrad Jenkins (Chair)	xRyan Cooper
xGordon Wright (Co-Chair)	xPeter Stevens
xLt. Kati Booth	xBrett Barratt (Non-Voting)
xStephen Aina	

Staff

Todd Kiser, <i>Ins. Commissioner</i>	xSuzette Green-Wright, <i>MC Director</i>	xCathy Burton, <i>Examiner</i>
Reed Stringham, <i>AG Counsel</i>	xRandy Overstreet, <i>Licensing Dir.</i>	xKathy Archuleta, <i>Analyst</i>
xSteve Gooch, <i>PIO Recorder</i>		

Public

Vivian Deems	Todd Pontes	Tracy Rolish
Kyle Layton	Wayne Carlos	Clay Carlos

MINUTES — *Approved*

- **General Session (Open to the Public)**
 - **Welcome** (12:02pm)
 - Adoption of Minutes for July 14, 2015 Meeting / Chair
 - **Motion by Gordon to adopt minutes. Seconded by Kati. Motion passes 6-0.**
 - Adoption of Minutes for August 26, 2015 Teleconference / Chair
 - **Motion by Gordon to adopt minutes. Seconded by Kati. Motion passes 6-0.**
- **Executive Session - If Needed (Closed to the Public)**
- **General Session (Open to the Public)**
 - **Approve Recommended Actions from Executive Session** – Not needed.
 - **Licensing Report for January through March** / Cathy
 - Cathy has started the process of sending out letters about lapsed licenses that have been reinstated. She has had a lot of responses, but a lot of bail agents are writing business when their licenses have lapsed and they haven't been associated back with the agency. She cautions agency owners to look to make sure their agents are currently licensed and associated with their agency.
 - Brad confirms that licenses expire at the end of a licensee's birth month every two years.
 - Cathy says licensees and agencies are both held responsible for bonds written when a license lapses.
 - Pete asks if action is taken against companies in those cases. Cathy says yes, the department investigates to determine how many bonds were written, the amount and the premiums. Then they determine what the appropriate action is, ranging from a private letter of admonition up to a surrender in lieu. Cathy says problems happen when an

agent's license lapses but the agent assumes it's still active. If you don't renew, your license and appointments go down. When that happens, a lot of agents continue to write bond while their license is down for the agency. Pete says agencies need to be more diligent.

○ **Summary of Enforcement Reports / Cathy**

- Proposed Penalties for Board's Review: None
- Agency Audit Update / Cathy
 - Cathy is in the process of finishing up some audits. She's seen some trust violations. Everyone needs to be cognizant that their trust money is deposited into a trust account and it's only released when appropriate.
 - A lot of ICases that were opened over the past 3 months involved judgement forfeitures. Some were recalled by the courts and some were paid off. Some have longer than 5 days, which is either because of weekends or because the court asked Cathy to wait a few days before having the judgment of forfeiture paid to them. Some courts are allowing payment plans on judgments of forfeitures. Brad asks if they'll allow payment plans on multiple forfeitures. Cathy says she thinks it depends on the individual court.
 - One open enforcement case is more than 300 days old, which is because of the case and the fact that there's a probationary period. Brad asks about one that says "review of financials" — is that one where collateral or stability could have changed from the time of licensing to the present? Cathy says those could be factors.
 - Stephen asks if "not appointed to an agency" means they're doing their own single-person operation. Cathy says it's probably that their license lapsed and they didn't get reassociated to it, or the agency license could have lapsed too. Cathy says the department often sees inability of licensees to remember that their license is up.

○ **New Business**

- **App: Best Bail Bonds**
 - During the August teleconference, there were some concerns expressed about Wendy Madrill. Cathy talks about the judgments against her, and notes that they were in 2008 and 2009. In 2010, Wendy filed a Chapter 7 bankruptcy, which means they were discharged; the court records don't reflect that, but it happened. On Wendy's 2011 resident limited line license application, there was a question about judgments and bankruptcies. She would have had to answer "yes" if the judgments were money judgments that involved insurance, or if the Chapter 7 bankruptcy involved money she was holding for other people in a fiduciary capacity. Neither was the case.
 - Wendy provided a list of bonds that she wrote in 2011 (301 bonds), 2012 (158 bonds) and 2013 (103 bonds): a total of 562 bonds. Accounting for the 2,000 requirement, that's 3.5 hours per bond. Brad recalls that the commissioner's thought was that if 500 bonds were written, that should meet the criteria. Cathy agrees.
 - Cathy notes that she was also asked to find out the formation date for DJE Residential dba Best Bail Bonds, which is August 28, 2011. Pete asks if DJE Residential is still operating as a residential company. Jan says yes, and she also has a DBA that's a bail bond company. Jan says they could have gotten a bond based on the real estate they own, but DJE is the owner of the real estate. Pete's concern is that later she can file an action on someone she posted a bond for, but if she's suing under the residential company, the person won't know who DJE is and they'll fail to appear. Jan says all

correspondence will have both the DJE name and the dba on it. Stephen notes that DJE and the dba are both registered with the UID and with the Department of Commerce.

- Ryan says during the teleconference, Wendy was adamant that the judgments weren't hers and that she knew nothing about them. She says she'd just gone through a rigorous credit check because she just bought a new house. They were cleared and had never come up before.
- Gordon asks if Commissioner Kiser is OK with the hours. Cathy says yes, that's her understanding.
- **Motion by Gordon to approve the Best Bail Bonds application. Seconded by Stephen. Motion passes 6-0.**
- **New App: Xtreme Bail Bonds**
 - Brad recuses himself because Xtreme Bail Bonds is a company he is forming.
 - The application is for Pawn Solutions LLC dba Xtreme Bail Bonds. Pawn Solutions was incorporated January 3, 2012. She has a copy of the Articles of Organization. Members are J.A. Gustafson, B.A. Jenkins and M.R. Jenkins. She has the EIN, and the Department of Commerce shows Xtreme Bail Bonds as a dba of Pawn Solutions as of September 21, 2012. Both names are current and active. Cathy also has the CPA compilation report, which lists the assets, liabilities, members equity and income basis for 2014. The CPA also submitted a letter dated October 9, 2015 stating the net worth of the company is \$556,320. Brad Jenkins has been licensed with the UID since July 15, 1998. She has tax info for several years, as well as a letter from Melody Jenkins, the qualifying active officer of A Sportsman's Bail Bonds, stating that Brad has been in the bail bond business for over 20 years and has met the 2,000 hour requirement. She also has a list of bonds written by Brad over the last 5 years: 444 in 2011, 414 in 2012, 345 in 2013, 213 in 2014, and 211 thus far in 2015, which is a five-year total of 1,627 bonds. She also checked CourtExchange and there are no outstanding judgments. She has Pawn Solutions' tax information for 2013 and 2014. Xtreme Bail Bonds' operational and trust accounts are at America First Credit Union. She has a copy of the liquid account statement, which shows that it currently contains \$100,190.
 - Brett asks if A Sportsman's is a surety or collateral backed. Brad says it's collateral also. Cathy notes that Brad is opening Xtreme using different assets. Brett asks why he's opening Xtreme. Brad says it's for differential marketing purposes.
 - **Motion by Pete to approve the Xtreme Bail Bonds application. Seconded by Stephen. Motion passes 6-0.**
- **Associations & Designations / Randy Overstreet**
 - A renewal notification is sent to licensees who are up for renewal 75 days before expiration to the email address they have on file with the department. Renewal happens every 2 years at the end of their birth month. There's also a statutory requirement that licensees maintain an accurate email address and have it on file with the department. Brad asks if most companies keep their email addresses current. Randy says yes. Cathy notes that she sent some emails out to everyone, and they all sent just fine with no bounce backs. Randy says some emails occasionally bounce back, but that happens with snail mail too. There have been fewer bounce backs with emails. The department tries to notify individuals and make it easy to remember by

having renewal happen at the end of their birth month. For agencies it's every year in July.

- Licensees can also look up their expiration on Agent Search or on Sircon.com/Utah too. It's readily accessible for people to know when their license expires, and we send out notice. In the event licenses lapse, all associations and designations with agencies are terminated. When a license is reinstated (which can happen any time up to a year), they are not automatically reassociated or redesignated with any agencies. It says in R590-244-10 that it's the agent's responsibility to make sure they are reassociated or redesignated properly. Agencies can go into Sircon and click on "Maintain Associations" then "Create Association" for either a new licensee or reinstated licensees. Sircon charges \$3.25 to make an association.
- Licensees need to make sure they renew separate licenses individually. They do not renew simultaneously. If they are separate licenses, they have separate renewals and costs.
- Cathy asks if agencies are notified if an individual's license goes down. Randy says no. He doesn't know why it's so hard for Sircon to do, but they have not done it yet. The department has submitted a ticket, but there's been no movement. In other lines, if an individual agent's license goes down the insurers are notified. However, it doesn't currently work between agent and agency. We don't know how long it will be before Sircon makes that fix. We realize the importance of it, it's just a computer issue.
- Cathy notes that she often gets anonymous tips when somebody's license has lapsed, but they've been seen doing business.
- **Brett suggests putting an update on the January agenda regarding this issue.** Randy says he'll notify Cathy about it every quarter so she can report to the board.
- Accessing Information on SERFF / Kathy Archuleta
 - The department recently implemented filing access on the UID website, so agencies can see their form, rate, and rule filings. Kathy gives a brief demonstration about how to access the system.
 - Choose "Property & Casualty" then type in your company name (if collateral-backed) or your insurer's name (if surety-backed). This will bring up any filings from 2010 to current. It will show the most recent form filings your company has filed.
 - New companies that become licensed can't submit forms until the company becomes active, then the forms can be used after 30 days. Brad asks if they can be approved before the 30 days. Kathy says in the case of Xtreme Bail Bonds, which was approved today, if the forms are submitted today they can be used in 30 days if there are no issues.
 - Pete notes that the page says rate and form filings are now accessible through a public records request. Kathy says it's through SERFF Filing Access, and notes that anything that's not confidential is available. Pete asks if it's for all lines of insurance. Kathy says it's for P&C, but can't speak for health and life. Brett says title insurance is available too. Escrow rates are available via an Excel spreadsheet on the UID website.

- Brad asks if a prior form becomes obsolete when a new form is approved. Kathy says they're all accessible, but the system will show only the most recent form as the one that should currently be used.
- Stephen asks if the public can access the info. Kathy says yes, then shows how to do it. It's on the UID website under Agency/Company and then Rate/Forms.
- **Bank trust accounts / Brad**
 - Brad went to the bank he normally uses (US Bank) to open a trust account for Xtreme Bail Bonds, and they notified him that company policy is to not open a trust account for a bail bond company. He says he knows people who have them, and they said they'll be getting a letter shortly saying they'll need to find a new bank. He checked with some other people and found that their banks are moving in the same direction.
 - He asks if the department can change or adopt something in the rules regarding bail bond trust accounts, because they won't be available in the future.
 - Pete says Zions sent letters to attorneys who held similar accounts and stopped them. If there's not a lot of activity and they're not making money, they're not going to support it.
 - Brad suggests that the department start thinking about what to do because time is short. Could there be a separate account or smoothing? Cathy asks if they gave him something regarding the policy. He has asked for it but hasn't received it. Gordon suggests calling it something like "fiduciary" or something.
 - Randy says according to the rule it has to be called a trust account or words of similar import. "Fiduciary" or something should be OK.
 - Brad would like the department to come up with new wording ASAP. Pete notes that banks have a heightened sensitivity to trust funds because it's not your money. He thinks this is the first domino before the banks start charging for it. Brad notes that credit unions are a lot easier than banks. Jan says she went with Zions, and it was hard to get done, but she got it. Brad says even credit unions have had rumors and murmurings about getting rid of trust accounts for bonds.
 - Pete says the risk is that if the bank isn't on notice that it's a trust account (or similar designation) and there's a judgment against you or a garnishment, they can seize the money. The code says this money isn't to be used to pay the obligations of the agency.
 - Brad suggests thinking about this issue now, rather than waiting until something actually happens. Brett says we don't have an answer now, but he'll contact someone in the Financial Institutions Division and should have action as we get closer to the legislative session. That will at least make people aware of it. If Cathy hears of this happening, Brett would like to know so we can see what options we have. Pete suggests inquiring with the NAIC to see what's happening elsewhere.
- **Old Business**
 - Update on Bail Bond Board opening / Cathy
 - Commissioner Kiser has received applications, Cathy has given him information about the applicants, and he is in the process of making a decision. Brad asks when he thinks the decision will be made. Brett thinks it will be determined shortly, and should definitely be before the next meeting.
- **Other Business**
 - Open January 14, 2015 minutes to make a change and have the minutes approved

- Motion by Kati to open the minutes. Seconded by Stephen. Motion passes 6-0.
- Cathy says the minutes should reflect that Darren Brady filed a personal Chapter 11 bankruptcy in January. It formerly said that it was Rebel Bail Bonds that filed bankruptcy.
- Motion by Gordon to approve changes. Seconded by Ryan. Motion passes 6-0.
- Kati would like to add to next month's agenda a discussion about how we track the accumulation and proof of hours.
 - It put Wendy's bond off for a long time, and it's not fair at any level. We need to structure the qualifications more, and suggests having a list of written bonds and an idea of how long it takes to get 2,000 hours. Relying on a former boss who might be a competitor isn't very fair.
 - Pete suggests equating the number of bonds to hours. Brad notes that if you're not working specifically on a bond, you're not really working. However, large bonds can take longer, so that's not really fair either. There are more things that happen in the course of a day that should count as bond work. Suzette asks Wayne Carlos if his association was the group that created the 2,000 hour rule. He says yes they did. Brad suggests that the association and the department come together to determine the standard.
 - Brett notes that the difference between Bail and other lines is that other lines have tests they have to pass and trainings they have to do. The bail industry is small enough that it historically hasn't been commercially viable for continuing education providers to operate. It is suggested that there are online training/education providers that might fill the need, or at least make sure any licensing regulations are covered.
 - Brad thinks it's a two-prong approach: we need to get people to understand the industry as a whole, and then also Utah's rules and regs in the bond industry. **Brett will do an informal look at what other states in the West are doing.**
 - Kati suggests looking at how notaries are licensed: they provide the information, you study it, take the test, and get a notary license. Pete agrees and says there are no licenses other than bail where someone just affirms that they've been doing it to get their license. Brad says the association should be able to come up with a test. He says he and Wayne can take that on. Wayne thinks it's important that the industry itself design it, not the department. There are more procedures than just rules, and only the industry knows it well enough.
 - Randy notes that 31A-23a-108 talks about exam requirements and national standards. It says the commissioner can require an applicant to pass a line of authority exam as a license, except for licenses under limited line licenses, which includes bail.
- Legislation update
 - The department, bail bond board and the association have worked on revising and improving the bail bond chapter and a few other chapters. Senator Hillyard will have a bill filed in his name that compiles everything they've been working on. Brett submitted that info 6-8 weeks ago, but he hasn't heard anything from the drafting attorney.
 - Gordon says he's heard rumors that what they've discussed has been changed, with things taken out or added. Brett says nothing has changed since the October 2014 draft. It was the same copy they all worked on, and he forwarded it and some changes to Title 21 that they worked on previously. This will be its own bail bill.

- Brett suspects that the pretrial release board will also be running a bill. That report will be discussed at a meeting tomorrow, then it will be submitted to the Supreme Court for consideration at its November meeting. Gary and Brett presented two months ago, and he's happy to provide it to anyone who wants it. Gary's presentation had the most pop to it. He was a very effective spokesman for the industry.
- Gordon says he, Wayne and Gary met with industry people. Senator Hillyard came out and said bail are bloodsuckers on the system, and he can't wait to get them out of the system. He may meet with the association, but he has his mind made up about what to do with the industry. Pete asks what the alternative is. Gordon says it's pretrial release. Hillyard wants to take away the ability for people to make the choice to use a bond.
- Kati says what she's seen is not getting rid of bonds totally, but making people see the judge first, then the judge posts the bond. This effectively could make people wait in jail longer than they normally would. Gordon says in 2014, there were 109,000 active warrants on the statewide system. Since they went on cash bail system, there were over 212,000 warrants. If the state does pretrial, we'll go to over 500,000 warrants in a year. Brett says his sense is that bail will still be a part of the system, but from what he's seen, probably not as big a part of the system.
- Wayne says the acid test is who appears in court — only 0.0038% of bonded people don't appear. But with pretrial release, only 49% of people do appear.
- Brad asks how can it be more effective to promise to show up, rather than someone who's mom mortgaged her house for bail.
- **Adjourned** (1:20pm)
 - **Next Meeting:** **January 13, 2016**, Copper Room, East Building

2015 Meetings (Noon to 1:30pm)

~~Jan 14, 2015~~ ~~Apr 8, 2015~~ ~~July 14, 2015~~ Oct 14, 2015