2003 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy and Research

Bail Bonding Agent Regulation

October 15, 2003

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director
Richard F. O'Donnell
Executive Director

1560 Broadway, Suite 1540
Denver, CO 80202
Phone: (303) 894-7855
Fax: (303) 894-7885
V/TDD: (303) 894-7880

Bill Owens
Governor

October 15, 2003

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the Colorado bail bonding agent regulatory program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2004 legislative committee of reference. The report is submitted pursuant to section 24-34-104(9)(b), of the Colorado Revised Statutes (C.R.S.), which states in part:

> *The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*
>
> *The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….*

The report discusses the question of whether there is a need for the regulation provided under Article 7 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Insurance and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Richard F. O'Donnell
Executive Director

2003 Sunset Review

Colorado Regulation of Bail Bonding Agents

EXECUTIVE SUMMARY

Department of Regulatory Agencies

Bill Owens
Governor

Richard F. O'Donnell
Executive Director

Quick Facts

What is Regulated? The oversight of bail bonding agents protects citizens in need of a commercial surety. The public, in general is also protected because the bond serves, in theory, to prevent a nonappearance in court by the defendant.

Who is Regulated?

- 481 surety bail bonding agents
- 26 professional cash bail bonding agents
- 8 cash bail bonding agents

How is it Regulated? The Division of Insurance (Division) within the Department of Regulatory Agencies is responsible for administering and enforcing the provisions of Article 7 of Title 12. There are no full-time equivalent employees allocated to the program. The daily functions are carried out by a supervising investigator and an administrative assistant. Both independent contractors and staff of the Division's Market Conduct Examination Section conduct examinations.

What Does it Cost? The FY 2002-03 total program expenditures for the Division of Insurance were $8,666,358. The Division does not separate out the cost of the bail bond program.

In 2003, license costs were:

	New License	Renewal
Bail Bonding Agent	$289	$289

What Disciplinary Activity is There? During the four year, fiscal year period 1999-2003, disciplinary proceedings consisted of:

Complaints Filed	353
Revocations	5
Suspensions (without probation)	3
Probation	5
Stipulated Agreements	51
Other	63

Where Do I Get the Full Report? The full sunset review can be found on the internet at: www.dora.state.co.us/opr/2003BailBondingAgents.pdf

Key Recommendations

Continue regulation until 2013
The potential threat to the public presented by bail bond agents argues for continued regulation. In the past three years, market conduct examinations conducted by the Division of Insurance uncovered 129 instances of noncompliant business practices. These practices included failure of agents to provide lists of collateral to the surety company, failure to properly report premium, and failure to provide written premium or collateral receipts. These types of practices have the potential to harm consumers and, in an unregulated market, could result in significant economic harm to Colorado citizens.

Require cash and professional cash bail bonding agents to file rate filings with the Division of Insurance
Because bail bonding agents are given discretion in the premium they charge, up to 15% of the total bond amount, and because they self-report these premiums to the Division, this recommendation would assist the Division in making an accurate determination of the amount of premium tax owed by these licensees.

Create a bail advisory committee
In addition to fostering cooperation and improving communication between the bail bond industry and the Division, an advisory committee could render advisory decisions to the Division in matters involving complaints and help to ensure that bail bonding agents properly report and pay premium tax.

Reform records and record keeping requirements
The lack of consistent and updated statutory record keeping requirements results in inefficiencies for the Division, confusion for licensees regarding their record keeping responsibilities, and difficulties in performing market conduct examinations and investigations. This recommendation identifies broad areas of reform to improve state requirements.

…Key Recommendations Continued

Require bail bonding agents to provide disclosure statements to consumers

Regulation is most effective when consumers are aware of the regulatory protections provided by the state. By providing disclosure statements to consumers, they would be informed of such information as requirements for the issuance of receipts of collateral, requirements for return of collateral and storage fees, and Division contact information for filing a complaint.

Reinstate the appointments process

Since the 1999 repeal of the provision that required surety companies to report their active bail bonding agents to the Division, there have been instances of surety bonding agents becoming licensed and renewing their licenses without current backing of an insurer. In some cases, an agent may have written the bond as a cash or professional cash bail bonding agent with no surety company backing. The re-instatement of this provision will assist both the Division during the complaint investigation process and the surety companies in identifying alleged inappropriate behavior by their agents.

Major Contacts Made In Researching the 2003 Sunset Review of the Regulation of Bail Bonding Agents

Division of Insurance Staff
State Judicial Department
City and County of Denver
Attorney General's Office
Government Relations for Cash Agents
Government Relations for Professional Cash Agents
Government Relations for Surety Agents
Professional Bail Agents of Colorado
Representatives of out of state surety companies
Pioneer Insurance

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
Colorado Department of Regulatory Agencies
Office of Policy & Research
1560 Broadway, Suite 1540 Denver, CO 80202
www.dora.state.co.us/opr

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Background

The Sunset Process

The regulatory functions of the Division of Insurance (Division) in accordance with Article 7 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2004, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Division pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether Article 7 of Title 12, C.R.S. (Article), should be continued for the protection of the public and to evaluate the performance of the Division and staff. During this review, the Division must demonstrate that there is still a need for the Article and that the regulation is the least restrictive regulation that is consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 45.

Methodology

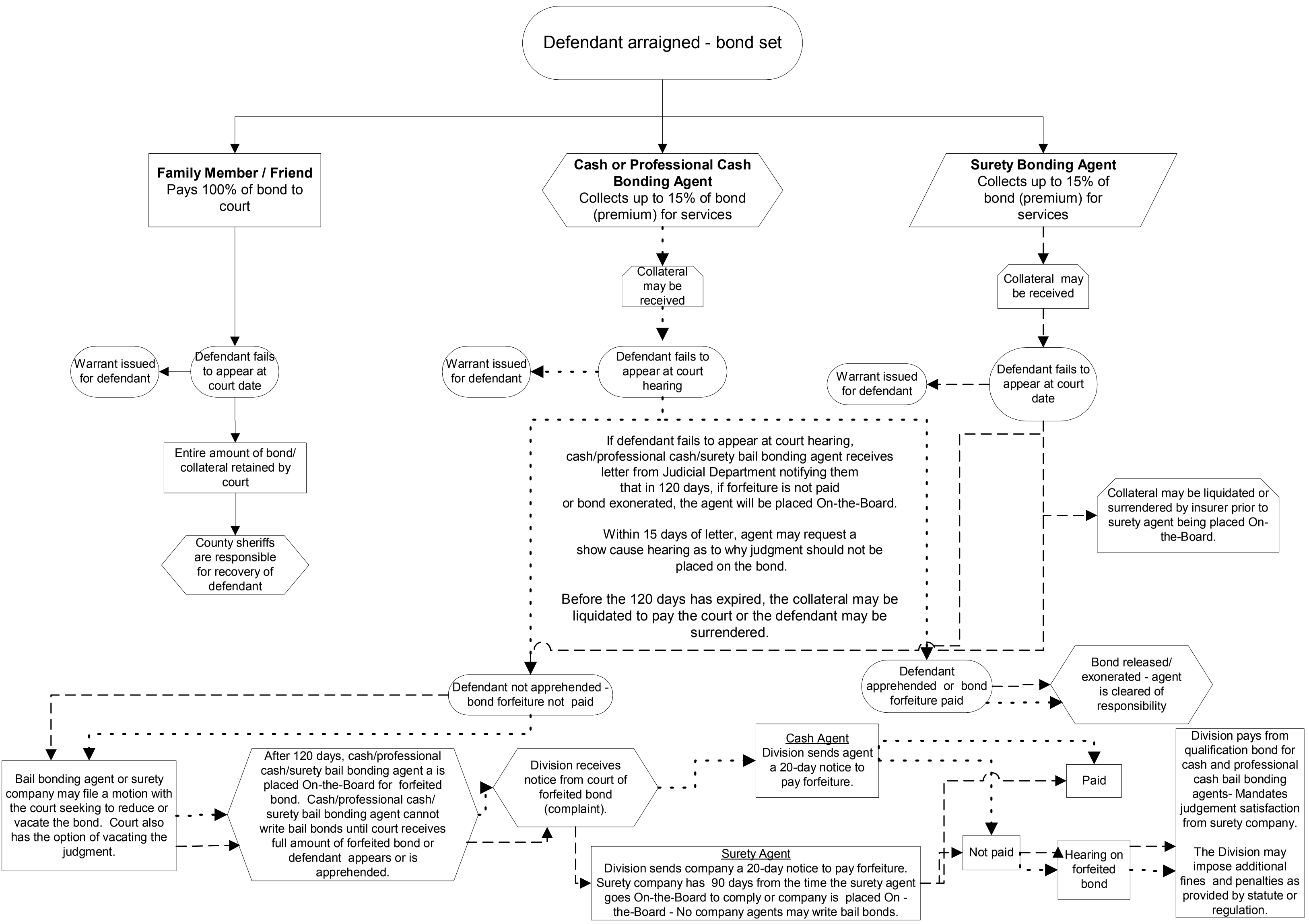
As part of this review, DORA staff interviewed Division staff, members of professional associations, and representatives of the various license groups; reviewed Division and Attorney General's Office records, including complaint files and disciplinary actions; surveyed other states; reviewed Colorado statutes and Division rules; and, reviewed information provided by the National Association of Insurance Commissioners on the laws of other states.

Profile of the Profession

Posting a bail bond involves a contractual undertaking guaranteed by a bail bonding agent on the one hand and an indemnitor on the other hand. The bail bond is a financial guarantee to the court that the defendant will appear in each and every court appearance as the court directs. Failure of the defendant to comply with the conditions of the court could result in a warrant for arrest being issued and the bail bond forfeited. For this service, the bail bonding agent charges a premium. Colorado law permits premium charges of up to 15 percent of the full bail amount. In addition, the bail bonding agent may impose other requirements, such as collateral, depending on the individual circumstances.

After an agreement is reached between the bail bonding agent and the defendant and/or third party indemnitor and all fees are paid, the bail agent physically posts a bail bond with the court. The bail bonding agent may require additional collateral from a third party indemnitor prior to posting the bail bond. If the defendant fails to appear in court, the defendant and/or third party indemnitor is responsible for the full amount of the bail and collateral may be liquidated to pay the bond. If the defendant is located and returned to custody, the defendant and/or third party indemnitor is responsible for all expenses incurred by the bail bonding agent while looking for and returning the defendant. There is no limit on expenses for bail recovery or a requirement that the bail agent itemize the bail recovery expenses.

The flowchart on the following page illustrates the bail bond process from inception to completion.


Bail Bond Process
Defendant arraigned - bond set
Family Member / Friend Pays 100% of bond to court
Cash or Professional Cash Bonding Agent Collects up to 15% of bond (premium) for services
Surety Bonding Agent Collects up to 15% of bond (premium) for services
Collateral may be received
Collateral may be received
Warrant issued for defendant
Defendant fails to appear at court date
Warrant issued for defendant
Defendant fails to appear at court hearing
Warrant issued for defendant
Defendant fails to appear at court date
Entire amount of bond/ collateral retained by court
County sheriffs are responsible for recovery of defendant
If defendant fails to appear at court hearing, cash/professional cash/surety bail bonding agent receives letter from Judicial Department notifying them that in 120 days, if forfeiture is not paid or bond exonerated, the agent will be placed On-the-Board.
Within 15 days of letter, agent may request a show cause hearing as to why judgment should not be placed on the bond.
Before the 120 days has expired, the collateral may be liquidated to pay the court or the defendant may be surrendered.
Collateral may be liquidated or surrendered by insurer prior to surety agent being placed On-the-Board.
Defendant not apprehended - bond forfeiture not paid
Defendant apprehended or bond forfeiture paid
Bond released/ exonerated - agent is cleared of responsibility
Bail bonding agent or surety company may file a motion with the court seeking to reduce or vacate the bond. Court also has the option of vacating the judgment.
After 120 days, cash/professional cash/surety bail bonding agent a is placed On-the-Board for forfeited bond. Cash/professional cash/ surety bail bonding agent cannot write bail bonds until court receives full amount of forfeited bond or defendant appears or is apprehended.
Division receives notice from court of forfeited bond (complaint).
Cash Agent
Division sends agent a 20-day notice to pay forfeiture.
Surety Agent
Division sends company a 20-day notice to pay forfeiture. Surety company has 90 days from the time the surety agent goes On-the-Board to comply or company is placed On -the-Board - No company agents may write bail bonds.
Paid
Not paid
Hearing on forfeited bond
Division pays from qualification bond for cash and professional cash bail bonding agents- Mandates judgement satisfaction from surety company.
The Division may impose additional fines and penalties as provided by statute or regulation.

History of Regulation

The bail process has been in existence since the medieval days of England, when accused persons were imprisoned for long periods before the King's justices appeared to hold court. Jails were not secure, and jailers would be hung in the event of an escape. There were no provisions for adequate food or sanitation and many people died awaiting trial. Due to these problems, less costly and less troublesome alternatives evolved. Sheriffs began releasing accused persons to their family members and friends who acted as surety for the accused. These sureties were responsible for the defendant's appearance in court and were liable in the event that they failed to appear.

The United States Constitution includes the right to reasonable bail as one of the basic rights afforded U.S. citizens. The Eighth Amendment states, "Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted."

The right to bail is also included in the Bill of Rights of the Colorado Constitution. Additionally, Section 20 of Article II of the Colorado Constitution mirrors the language in the Eighth Amendment of the U.S. Constitution.

Section 16-4-101, *et seq.,* C.R.S., enumerates the procedures by which Colorado courts administer bail. Regulation of those persons who may write bail bonds is vested in the Division of Insurance (Division) within the Department of Regulatory Agencies (DORA).

State regulation of bail bonding agents by the Division began in 1963, when the General Assembly adopted a law to provide for the licensing and regulation of professional bailbondsmen. "Professional bailbondsmen" was defined at that time as being any person who furnished bail, whether for compensation or otherwise, in five or more criminal cases in a county with a population of 50,000 or more. The statute did not reference any requirement that a bailbondsman be associated with an insurance company.

In 1988, the Division, by policy, interpreted the statute to require as a condition of licensure, all bail bonding agents to be appointed by an insurer. Subsequently, in 1990, the Division moved to revoke the licenses of the 18 then existing cash bailbondsmen (see Licensure section of this review for discussion of cash bail bonding agents). The cash bailbondsmen appealed the Division action and the Division's action was overruled by an administrative law judge in a decision dated October 18, 1990. That decision found that, although the Division could legally refrain from licensing any new cash bailbondsmen, it is "equitably estopped from revoking" the license of the remaining cash bailbondsmen based on its reinterpretation of the definition of "professional bondsman". This decision was additionally upheld upon appeal by the Division.

Legislation resulting from the 1992 Sunset Review of the Regulation of Professional Bailbondsmen amended the bail bond statute to give the Division priority in collecting on forfeited bonds. Sunset recommendations not adopted from the 1992 review included increasing the qualification bond from $50,000 to $250,000, use of a uniform bail bond instrument, and usage of standardized collateral receipts, which would have introduced transaction controls.

As a result of the recommendations made in the 1995 sunset review, the General Assembly repealed the provision that required applicants to furnish the Division with references attesting to the fact that they were of good moral character. Additionally, provisions in the statute were repealed to improve the enforceability of section 12-7-106, C.R.S., which addresses the Division's authority to deny, suspend, revoke, and refuse to renew licenses.

In 1998, the General Assembly added the definition of "bail recovery" and provisions enumerating measures that licensed bail bonding agents must take before hiring or contracting with individuals for bail recovery services. In addition, the disciplinary action section was amended so that a violation of the bail recovery provisions would be grounds for discipline.

Provisions were added in 1999 that created the On-the-Board system. An agent's name goes "On-the-Board" after the agent fails to pay a bond forfeiture within the 120 days allowed by the courts. If an agent's name remains On-the-Board for more than 30 consecutive days, the court responsible for such placement shall order the Division to declare the qualification bond in forfeiture. An agent is prohibited from writing new bonds while On-the-Board.

Legislation in 1999 defined the term "professional cash bail agent" as it exists currently. Additionally, provisions were adopted to require professional cash bail agents to post with the Division qualification bonds of no less than $50,000. In the event of qualification bond forfeiture, professional cash bail agents are prohibited from writing new bail bonds until the qualification bond is restored to at least $50,000. A condition for initial licensure for surety agents that requires satisfactory completion of eight hours of education regarding bail bonding and bail recovery was also implemented.

The statute was amended in 2002 to require all applicants for licensure to obtain a fingerprint-based criminal history record check.

Legal Framework

The regulation of bail bonding agents is found in section 12-7-101, *et seq.,* Colorado Revised Statutes (C.R.S.), (Article). The Division of Insurance (Division) within the Department of Regulatory Agencies (DORA) is responsible for administering and enforcing its provisions. The Article establishes licensure requirements, record retention requirements, payment schedule for bonding agreement requirements, and requirements for bail recovery services.

Licensure

Colorado law creates three types of bail bonding agents: surety bail bonding agents who have met certain educational requirements and act as agents of insurance companies; professional cash bail agents who were licensed as surety bail bonding agents for a minimum of four years; and, cash bail bonding agents who were grandfathered into the current regulatory structure with no additional requirements. All agents must submit to a fingerprint-based criminal history record check by the Colorado Bureau of Investigation and the Federal Bureau of Investigation. The Article prohibits licensure to bail bonding agents who have had felony convictions or sentences served in the previous ten years.

Cash and professional cash bail bonding agents must post qualification bonds with the Division in a minimum amount of $50,000. The qualification bond is intended to insure full and prompt payment to any court that has declared a bail bond forfeited and that was unable to collect on the bond.

There is no limit to the total dollar amount of bail bonds that cash bail bonding agents may post. Professional cash bail bonding agents are prohibited from writing a single bond for more than two times the amount of their qualification bond. Professional cash bail bonding agents are allowed to post larger qualification bonds and therefore write higher bail bonds.

Surety bail bonding agents do not post qualification bonds, and they have no limit as to the dollar amount of bonds that they may write. Although there is no statutory limit on the dollar amount of a bail bond written by a surety agent, the surety company does limit the dollar amount of a bail bond by the power given to the agent. Their forfeited bonds are typically paid from the agents' build-up-fund (BUF) accounts which are held by the insurance companies for which the agents write. If unpaid from the BUF accounts, the forfeited bonds are ultimately paid by the insurers the agents represent.

Licensure requirements for surety bail bonding agents include eight hours of education or training: two hours concerning the criminal justice system; two hours concerning bail bond industry ethics; and, four hours of jurisprudence. Bail bonding agents applying for licensure on or after January 1, 1999, must also demonstrate a maximum of 16 hours of training in bail recovery practices. This training must comply with standards established by the Peace Officers Standard and Training Board. Exemptions from these requirements are granted to reinstatement of cancelled or expired licenses under certain conditions and to applicants licensed in other states where the licensing requirements of such states are substantially similar to Colorado's.

Reporting and Record Keeping Requirements

Bail bonding agents are required to submit a number of reports each year. These reports are described below.

Bail Bonding Agent Annual Reports

All bail bonding agents are required to file annual reports with the Division no later than November 1 for the period of July 1 through June 30. The information required includes, but is not limited to, the following:

- names of persons for whom bonds were written, and dates and amounts of the bonds issued;
- amount of collateral or security received; and,
- the name of the surety insurance company under whose power of attorney the bond was written, if applicable.

Agents are also required to report to the Division the number of individuals for whom they have become surety on a bond and who have failed to appear for court hearings. This information is collected by the Division for the pretrial services release program and is included in the above mentioned report.

Cash and Professional Cash Bail Bonding Agent Semi-Annual Reports

Pursuant to the Division's Regulation 1-2-13, cash and professional cash bail bonding agents must also file semi-annual reports with the Division: prior to July 31 for business written for the six month period between January and June; and prior to January 31 for business written during the six month period from July through December.

The following information must be reported to the Division:

- the name of each person for whom such bail bonding agent has become surety;
- the date each bond was written;
- the amount of each bond issued by such bail bonding agent;
- the court in which each bond was posted;
- the fee for each bond charged by the bail bonding agent;
- the amount of collateral or security received on each bond;
- finalized total amount of premiums, commissions or fees charged; and,
- such further information as the Division may require including, but not limited to, residence and business addresses, financial statements and other business activities of the bail bonding agent.

If a cash or professional cash bail bonding agent did not write any bail bonds during the particular six month reporting period, the individual must file a report stating "no bonds written" during this time period.

Premium Tax Reports

Each cash and professional cash bail bonding agent must pay to the Division a tax on the fee (premium) charged for bail bonds. The rate of tax on the gross fee is one percent as set forth in section 10-3-209(1)(b)(I)(B), C.R.S. Premium taxes are due and payable to the Division on the first day of March in each year, and agents must file copies of the affidavit/summary pages from the bail bonding agents' January 31 and July 31 semi-annual bail bond reports with the premium tax payment.

Surety companies also pay premium tax by March 1 of each year. Domestic companies pay one percent of the gross premium fees for all of its agents, and foreign companies, those located outside of Colorado, pay a rate of two percent of gross premium fees for their agents.

Reporting of premiums and the premium tax due is achieved through a self-reporting mechanism. There is no way for the Division to verify the accuracy of the reporting, and thus, the accuracy of the premium tax paid. This self-reporting premium tax system is discussed further in the Analysis and Recommendations Section of this review.

Bail Recovery Services

The Article enumerates requirements for the hiring, contracting with, or payment of compensation to individuals for bail recovery services. Since 1998, bail bonding agents have been prohibited from employing any individual who has been convicted of a felony or who has pled *nolo contendere* to any felony in the previous 15 years. The bail bonding agent is required to obtain this information, at his/her own expense, by contracting with the Colorado Bureau of Investigation.

There is no limit on bail recovery fees nor is there a requirement in the statute that the bail agent disclose or itemize bail recovery services.

Enforcement

The Division is responsible for maintaining copies of all applications, examinations, and reports regarding licensure of bail bonding agents. Additionally, the Division is required to retain complaint information involving licensees and summaries of actions taken by the Division against licensees.

The Division has the authority to deny, suspend, revoke, or refuse to renew licenses based on any of the following grounds:

- failing to post a qualification bond, or forfeiting or canceling the qualification bond;
- willfully failing to comply with the Article;
- engaging in any of the prohibited activities listed in the Article;
- failing to satisfy, pay, or discharge a bail forfeiture judgment;
- being convicted of a felony within the last 10 years;
- serving a sentence upon a conviction of a felony within the last 10 years;
- failing to report and retain separately, or to return collateral taken as security on any bond;
- soliciting business where prisoners are confined, arraigned, or in custody;
- failing to pay a final, nonappealable judgment award or failing to return or repay collateral received to secure a bond; and,
- hiring, contracting, or paying compensation for bail recovery services in violation of the Article.

The Division, in acting to deny, revoke, or suspend licenses, must afford the aggrieved person an opportunity for hearing pursuant to the Administrative Procedure Act before taking any final disciplinary action. The Division, after a hearing, is also empowered to levy a fine of no less than $300 and no more than $1,000 dollars for each offense against an agent and up to $10,000 against an insurance company for the actions of its surety bail bonding agents. If the licensee fails to pay the fine within 20 days, the Commissioner of Insurance (Commissioner) may revoke or suspend the license.

Required Notification to Surety Company

Any surety insurance company underwriting a bail bonding agent must receive a list of all collateral taken in order to secure a defendant's bond within 20 days of the bail bonding agent receiving the collateral. The Commissioner may also receive a copy of this list upon request, and failure to keep this information as required is a violation of the Article and grounds for revocation of the bail bonding agent's license.

Bonding Agreement Requirements and Fees

A bonding agreement must be in writing and signed by the bail bonding agent and the principal (defendant). The Article further stipulates that if the principal is illiterate or does not read English, a third party must read and translate the agreement and the bail bonding agent must attach a copy of this translation. The statute further stipulates that except for collateral storage costs and bond filing fees, bonding agents are not allowed to charge for bail services (premium) more than 15 percent of the total amount of the bond or $20, whichever is greater. Some bail agents charge interest on premium if the defendant or third party indemnitor has to pay the premium in installments.

Prohibited Activities and Penalties

Section 12-7-109, C.R.S., contains criminal penalties for specific activities that are illegal for bail bonding agents. The penalty for violation of any of the following prohibited activities is a misdemeanor, which includes a maximum $1,000-fine and/or imprisonment in the county jail for not more than one year. The same criminal penalty can be levied on any person who acts or pretends to act as a bail bonding agent without a license. Specifically, bail bonding agents are prohibited from the following activities:

- advising a client to employ a specific attorney;
- compensating an official of the judicial system;
- inappropriately compensating an attorney;
- compensating a client;
- accepting articles of value from a client, except for collateral security if certain provisions exist;
- coercing or suggesting that a client commit a crime;
- acting as a bail bonding agent if in default in securing any person's bond;
- failing to adequately preserve, separately retain, and/or account for all collateral security taken from a client to secure payment of a bond. If the bail bonding agent fails in the management or return of collateral as provided, the Commissioner is empowered to take possession of the collateral;
- signing of blank bail bonds or executing powers of attorney naming another to countersign bail bonds in the licensee's name;
- posting more than one bond at any one time on a single client;
- failing to issue a receipt for collateral or security taken from a client;
- failing to post bond within 24 hours of payment or a signed contract for payment of the premium or failing to refund monies, release liens, and return collateral within 48 hours of receipt of such payment or contract; and,
- acting as a bail bonding agent in any court of record while the name of the licensee is On-the-Board pursuant to section 16-4-112(5)(e), C.R.S.

On-the-Board System

The Judicial Department's Integrated Colorado On-line Network (ICON) is one automated system that fully integrates the following:

- trial court case processing
- court of appeals case processing
- drug court management
- financial processing
- probation case processing
- attorney registration
- alternative dispute resolution
- statewide bail bond system with "on the board reporting" for forfeitures

ICON allows the courts and the probation department in all 22 judicial districts, 64 counties, to track cases from the inception of the case through the completion of the case including completion of probation.

The database includes:

- basic demographic information;
- case class/case type;
- charges;
- judgments;
- sentences;
- case tracking;
- financial tracking;
- case planning; and,
- officer narratives.

The Denver City and County Court is not a part of the ICON system. Similarly, the records of Denver District Court which handles felonies, juveniles, civil cases over $15,000.00, probate, and domestic relations cases are not included in the ICON data. In addition, only two municipal courts, Broomfield and Fort Morgan are presently served by the ICON system.

Section 16-4-112(5)(e), C.R.S., creates the "On-The-Board system," which was originally enacted in 1999 to simplify and expedite bail bond forfeiture procedures. This law authorizes courts to bar bail bonding agents who have failed to pay forfeiture judgments from writing further bonds until the forfeiture is paid. The system initially started as a manual clipboard system in each court and therefore, the information was not always timely or accurate.

The current On-the-Board system was integrated into the ICON system in September of 2001.

The only county that is not part of the ICON system is Denver. In addition, only two municipal courts, Broomfield and Fort Morgan, are included in the ICON system. A representative of Denver City and County Court reports that the court maintains a list of bail bonding agents who are On-the-Board and faxes this list to the five surrounding counties on a regular basis. Unfortunately, most other counties and municipalities are not aware of bail bonding agents who are On-the-Board in Denver City and County Court. The representative also stated that staff of Denver City and County Court regularly uses the ICON system to check the status of bail bonding agents wishing to write bail bonds in their courts.

The Judicial Department furnishes bail information from ICON to CoCourts, a third party vendor. This on-line, statewide, real-time court records site that includes eight million court cases, provides an index of court documents, appearance dates, and a Register of Actions, by defendant. For a fee of $6.00 per inquiry, any person, including bail bonding agents, may view the history of a defendant to determine whether that defendant has a history of failures to appear at court dates. This information enables bail agents to better assess their risk in writing certain bail bonds. Additionally, when judges set bond amounts, they take in to account defendants' histories. Therefore, the amount of a bond also reflects the risks related to the defendant.

Regulation in Other States

Regulation of bail bonding agents varies greatly from state to state. For example, Illinois administers bail bonds directly through the courts; 10 percent of the total bail amount is paid directly at the jails. When the defendant fulfills all of the court's requirements, 90 percent of that payment is returned, and the court retains the 10 percent as bail costs. Texas requires that bail bonding agents post qualification bonds in every county in which they wish to write bail.

According to the National Association of Insurance Commissioners' Bail Compendium, the following are bail bonding agent qualification bond requirements:

Table 1
Comparison of State Qualification Bonds

Amount of Qualification Bond	Number and States
$0	1 (OH)
$5,000	2 (CA, NY)
$10,000	5 (AZ, MO, SC, SD, WA)
$20,000	1 (OK)
$25,000	3 (CT, LA, NM)
$50,000	3 (CO, KY, TX)
$75,000	1 (IN)
$100,000	1 (AR)
$125,000	1 (FL)
$300,000	1 (UT)

In short, 12 states require qualification bonds of less than $50,000, three (including Colorado) require $50,000, and four require more than $50,000. Not all of these states require "bonds." Some require agents to post cash with a court or insurance regulator. Finally, some of the above states' requirements may apply to surety bail bonding agents.

During the conduct of this review, a survey was sent to all insurance departments in other states. Eleven states responded to DORA's survey. Their responses to DORA's inquiries regarding types of agents and complaint and disciplinary actions are contained in Table 2:

Table 2
State Comparison

State	Surety Agents Only	Total Number Of Complaints Per Year For The Past 3 Years	Total Number Of Disciplinary Actions Per Year For The Last 3 Years
AK		2000 - 27 2001 - 45 2002 - 37	2000 - 2 2001 - 9 2002 - 8
AL		Not Available	Not Available
CA		Not Available	2000 - 22 2001- 34 2002 - 37
ID	X	2000 - 30 2001 - 28 2002 - 37	2000 - 3 2001 - 6 2002 - 1
IN	X	Not Available	2000 - 14 2001- 6 2002 - 4
KS	Not Available	Approximately five complaints about bail bond agents.	One
MI	X	Not Available	Not Available
MO		2000 - 19 2001 - 22 2002 - 27	Not Available
ND	X	Average approximately 5 - 10 complaints per year.	2002 - 1
NJ	X	Not Available	Not Available
VA	X	34	18

When asked about the critical factors in a successful bail bond regulatory program, responses included:

- Strong audits;
- Company control of the activities of their agents. The education program must emphasize the procedures implemented by the courts and the board so that the company/bail bond agent understands and can easily comply with the requirements;
- Laws that reflect how the industry does business;
- Regulatory control regarding bail agents' financial and recordkeeping practices, concurrent regulatory control by the courts, and accountability of sureties for the actions of their agents;
- Set procedures for virtually every function performed by the regulatory agency. Strict adherence to the law and to the procedures ensures that every company/bail bond agent is treated equally with a minimum of political intervention;
- Ability to enforce statutes; and,
- Communication with the bail bond industry and particularly the bail bond agents.

These comments were reviewed and considered in crafting recommendations for the improvement of Colorado's regulatory program.

Program Description and Administration

The Division of Insurance (Division) within the Department of Regulatory Agencies (DORA) administers the regulation of bail bonding agents. There are no full-time equivalent (FTE) employees allocated to this program. The daily functions are carried out by a supervising investigator and an administrative assistant. Two investigators also assist with investigations of bail bonding agents. Both independent contractors and staff of the Division's Market Conduct Examination Section are used to conduct examinations. Although the Division does not separate out the costs of the bail bonding agent program, the following table is provided to illustrate the Division's total expenditures and FTE for the previous five fiscal years.

Table 3
Agency Fiscal Information

Fiscal Year	Total Program Expenditures	Full-Time Equivalent Employees FTE
98-99	$8,043,519	89.8
99-00	$7,842,096	87.6
00-01	$8,284,162	84.5
01-02	$8,621,369	85.9
02-03	$8,666,358	79.4

Source: DORA Budget Request, Schedule 3 Program Detail

Licensing

Application to the Division to operate as a bail bonding agent requires payment of a license fee, and applicants must report felony convictions, license denials, suspensions or revocations during the previous 10 years. Additionally, prior to submitting an application, applicants are required to have a fingerprint-based criminal history record check. The Division issues a card to agents that includes name, address, and classification of licensure. Renewals are required biennially and must be submitted by January 1.

Fees imposed on bail bonding agents are displayed in the table below.

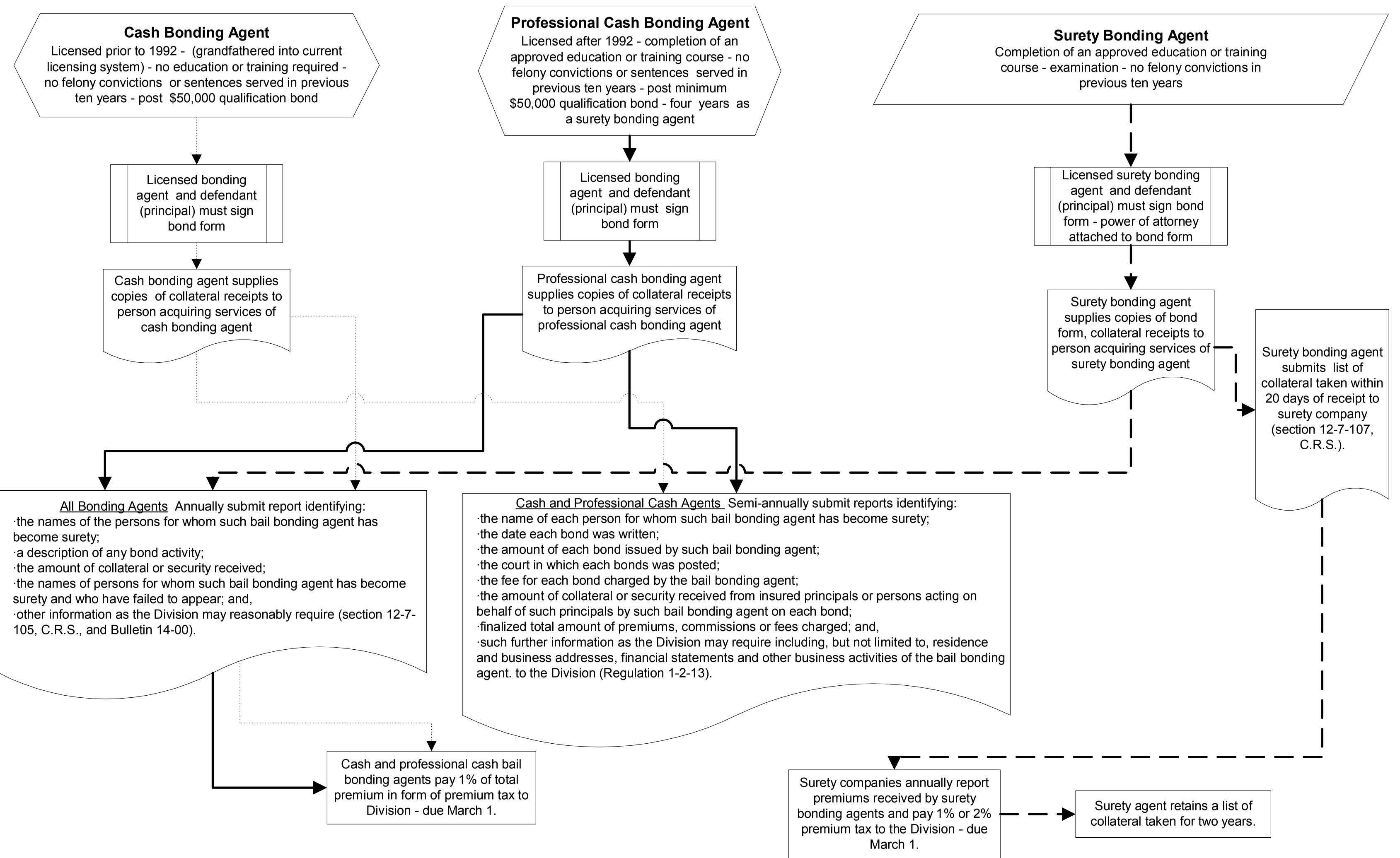
Table 4
Fees for Bail Bonding Agents

Type of Fee	Cost	Frequency
Bail Bonding Agent Examination Fee	$70.00	Per Examination Session (One time Fee)
Bail Bonding Agent Licensing Fee	$289.00	Per Authority (At each renewal)
Bail Bond Amount Change Fee	$50.00	Per Change (Upon occurrence)
Fingerprint Check	$13.00	Per Check (One time fee)

Source: Division of Insurance web site.

The requirements for the three types of bail bonding agents as well as records and reporting requirements are detailed in the flowchart on the following page.

Requirements, Records and Reporting to Division of Insurance by Type of Bail Bonding Agent



The Division contracts with Promissor, a private company, which is responsible for maintenance of the licensing database for all of the Division's licensees. The following table details the licensing activity of bail bonding agents for the last five fiscal years.

Table 5
Licensing Information

Fiscal Year	New Licenses	Licenses Renewed	Total Active Licenses On June 30
98-99	110	287	489
99-00	90	85	493
00-01	103	282	494
01-02	93	108	519
02-03	77	253	460

Source: Promissor

Licenses are renewed on a two-year cycle, thus the number of total active licenses is greater than the total of the new licenses and the renewed licenses. The Division reports that the number of licenses may have decreased in fiscal year 02-03 as a result of the market conduct examinations performed on insurers and their agents and the statutory change in 2002 that required fingerprint-based criminal history record checks prior to issuing and renewing licenses.

The Division's internal lists of current bail bonding agents are not generated by Promissor. During the course of this review, it was discovered that the historical aggregate information used in Table 5 does not agree with the Division's internal list of current licensees. This issue is further discussed in the Analysis and Recommendations Section of this review. The following information is derived from the Division's internal lists.

As of September 2003, there were 8 cash bail bonding agents, 26 professional cash bail bonding agents, and 14 insurance companies authorized to write bail through the 481 surety bail bonding agents. The license breakdown follows:

Surety Bail Bonding Agents	481	(93 percent of all bail bonding agents)
Cash Bail Bonding Agents	8	(2 percent of all bail bonding agents)
Professional Cash Bail Bonding Agents	26	(5 percent of all bail bonding agents)
	515	Total Active Licenses
Dual Licensed *	24	
	491	Total Bail Bonding Agents

* Three of the eight cash bail bonding agents (38%) and 21 of the 26 professional cash bail bonding agents (81%) are also licensed as surety bail bonding agents.

Source: Division of Insurance web site.

Twenty-four of the 34 cash and professional cash bail bonding agents are also licensed to write bonds as agents of surety companies. Most bail written in Colorado is written under the authority of a surety company. Surety bail bonding agents wrote 51,681 of the 65,197 bonds reported by ICON in calendar year 2002.[1] This is 79 percent of the total bonds, accounting for $229.4 million (86 percent) of the $265.7 million total bond amount.

Education and Examination

The statute establishes pre-licensure requirements for surety bail bonding agents that include eight hours of education or training: two hours concerning the criminal justice system; two hours concerning bail bond industry ethics; and, four hours of jurisprudence. Bail bonding agents applying for licensure on or after January 1, 1999, must also demonstrate a maximum of 16 hours of training in bail recovery practices. This training must comply with standards established by the Peace Officers Standard and Training Board. All applicants must satisfactorily complete the eight hours of training prior to taking the examination. Applicants licensed for more than one year in another state that requires pre-licensure education are exempt from the Colorado pre-licensure requirements.

Surety bail bonding agents applying for licensure must also demonstrate a maximum of 16 hours of training in bail recovery practices. This curriculum includes an introduction to bail recovery, principles of criminal culpability, the Colorado Criminal Code, firearms and weapons, and seizure and entry. This training must comply with standards established by the Peace Officers Standard and Training Board. Applicants must also successfully complete the 16 hours of training in bail recovery practices before being eligible to take the examination.

There are currently six test centers, one each in Bayfield, Colorado Springs, Denver, Grand Junction, Greeley, and Pueblo. The Greeley, Colorado Springs and Grand Junction centers offer the test only on Saturdays, while the Bayfield center offers the examination only on two Saturdays per month. The examination is offered Monday through Saturday in Denver and Tuesday through Saturday in Pueblo.

The following table details examination information for the last five fiscal years.

Table 6
Examination Information

Fiscal Year	Number of First Time Test Takers	Pass Rate (%)	Number of All Test Takers	Pass Rate (%)
98-99	109	84%	144	82%
99-00	91	76%	120	70%
00-01	102	80%	145	71%
01-02	86	81%	106	81%
02-03	107	78%	137	74%

Source: Promissor and Division Records

[1] ICON data does not include Denver County.

Complaints

One of the responsibilities of the Division is the handling of complaints against bail bonding agents. Complaints are received through a variety of channels such as consumers, insurers, law enforcement, courts, and other licensees. The Division routinely screens complaints to make sure that the Division has authority to respond and that the complaint, if true, would constitute a violation of the law or the regulations. Division staff reports that it differentiates between what it considers complaints and what it considers inquiries. An inquiry is a request for information, which does not involve intensive investigation or findings of facts, or does not meet the threshold criteria of constituting a prohibited act. Complaints are identified as any allegation wherein, after preliminary review by the Division, it is determined that the complaint may constitute a violation of the law.

The tables below illustrate the number of complaints and inquiries for the last four fiscal years.

Table 7
Bail Bond Complaints Received

FY 99-00	FY 00-01	FY 01-02	FY 02-03
129	91	40	93

Source: Division's Fines, Regulatory Actions and Etc. Database

Table 8
Bail Bond Inquiries Received

FY 99-00	FY 00-01	FY 01-02	FY 02-03
38	261	83	56

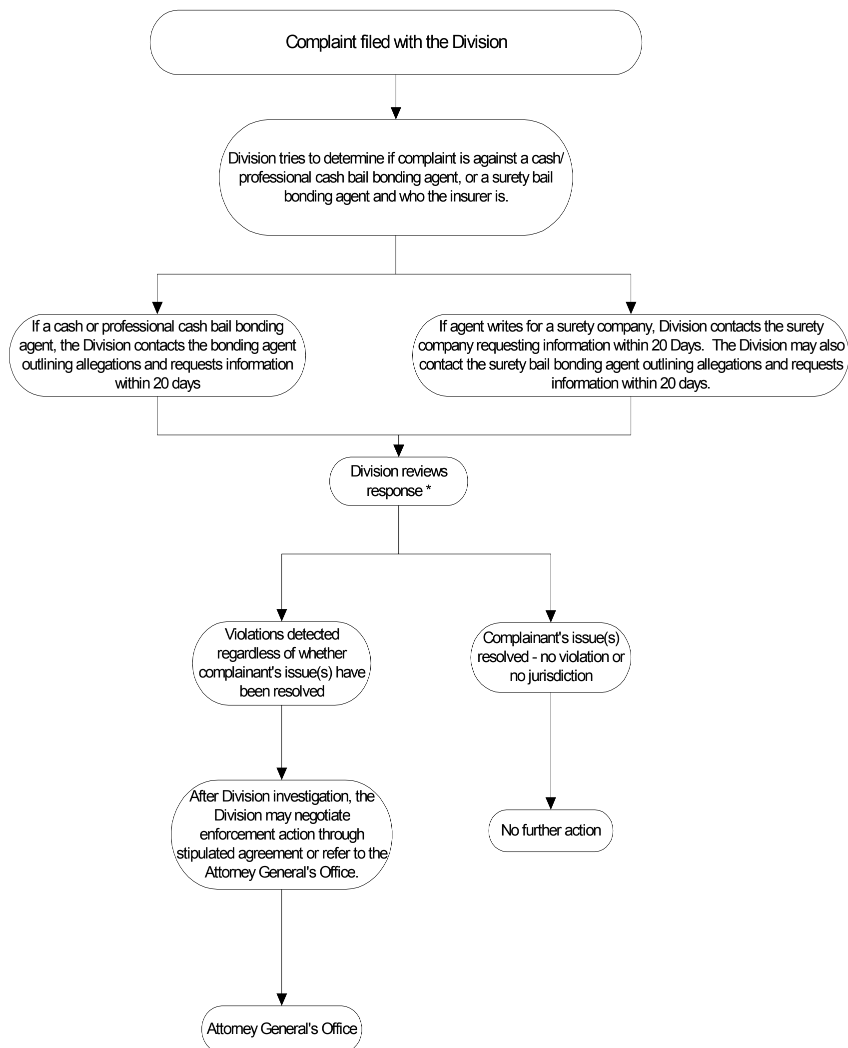
Source: Division's Fines, Regulatory Actions and Etc. Database

Complaints of bond forfeitures by courts are included in complaint data. After the On-the-Board system was implemented in September 2001, which precluded agents from writing bonds if they have an unpaid forfeiture until the forfeiture is paid, the number of bail bond complaints decreased somewhat in fiscal year 01-02 as evidenced above.

According to the Division, consumer complaints generally address failure to return collateral, inappropriate behavior, and bail revocation. Court complaints are related to forfeitures, inappropriate behavior, and bonding while On-the-Board. Complaints initiated by the Division involve felony convictions and failure to disclose actions. According to Division staff, during the past several years, the Division has continued to experience a disproportional number of complaints related to bail bonds compared to other lines of insurance.

An overview of the complaint process is displayed in the following flowchart.

Complaint Process



* Many times, the information submitted by the respondent or surety company contains indications of other violations not alleged in the original complaint or the response is incomplete, thus requiring the Division to request additional information.

The Division first determines if the agent is a cash or professional cash bail bonding agent or a surety bail bonding agent. However, many cash and professional cash bail bonding agents also write bonds as surety bail bonding agents. A letter is sent to the cash or professional cash bail bonding agent requesting information and a response to the complaint. If the agent is a surety bail bonding agent, a letter is sent to all surety companies for which the agent has written bonds in the past.

Many times, the information received from the respondent or surety company is incomplete or indicates additional violations not alleged in the original complaint. In these instances, the Division will re-request information and additional responses to the other potential violations.

A review of the Division's Complaint and Inquiry Reports indicates that as of June 1, 2003, there were 85 open complaints and 91 open inquiries being investigated by the Division. Complaints range from 10 days to 1,608 days open with an average of 373 days open. Inquiries have been open from 2 to 1,013 days with an average of 427 days open.

There were 293 complaints received and resolved during the last five fiscal years. These complaints were resolved within one to 1,231 days. The average days open was 165 days. There were 241 inquiries received and resolved during the same period. These inquiries were resolved within one to 837 days with an average of 85 days open.

Inspections

Repetitive, non-compliance issues exist for all types of bail bonding agents. However, the Division maintains that surety bail bonding agent issues are within the control and the responsibility of the surety companies which fall under the reporting and recordkeeping requirements of Title 10, C.R.S. These areas include compliance with Colorado insurance laws and regulations, meeting required reporting requirements, providing adequate selection, training and oversight of bail bond agents and investigating allegations of inappropriate activities by bail bond agents. In 2002, the Division instituted a series of market conduct examinations of all surety companies, specifically to determine the degree of oversight the companies have of their surety bail bonding agents.

Certain market conduct examinations have not been finalized, so the numbers reported may not reflect final agency orders. However, a summary of the non-compliant business practices from the 12 market conduct examinations completed is displayed in the table on the following page.

Table 9
Non-Compliant Business Practices from Bail Bond Market Conduct Examinations

Non-Compliant Business Practices	# of Companies Cited
Operations	
Failure to adequately monitor producers' activities.	11
Failure to properly report premium and pay the appropriate taxes.	5
Paying commissions to an unlicensed entity contrary to Colorado insurance law.	3
Failure to provide adequate procedures to prevent, detect and investigate possible agent and employee fraud.	2
Permitting agents to charge additional fees for bail bonds in violation of Colorado insurance law.	2
Failure to submit an anti-fraud plan summary with annual report.	1
Failure to file rates as required by Colorado insurance law.	1
Failure to have a complaint log that complies with the requirements of Colorado insurance law.	1
Failure to charge and report premiums as filed with the Division.	1
Failure to furnish application and/or bonding agreement with fraud statement affixed.	1
Failure to have an agent training manual that is in compliance with Colorado insurance law.	1
Failure to report to the Commissioner its producers' late remittance of premiums.	1
Producers/Agents	
Failure, in some cases, of agents to provide a list or adequate list of collateral to the company.	12
Failure, in some cases, of agents to comply with agent reporting requirements to the Division.	12
Failure, in some cases, of agents to sign and/or maintain bonding agreements or payment schedules as required.	12
Failure, in some cases, to register assumed (trade) name with the Division.	11
Failure, in some cases, of agents to collect or properly report premium.	11
Failure, in some cases, to display the required fraud statement on the applications.	10
Failure, in some cases, of agents to provide written premium or collateral receipts or properly issue receipts.	7
Failure of agents to fulfill fiduciary responsibilities by commingling funds.	7
Failure of agents to return collateral taken or within 10 working days.	5
Failure to maintain records for market conduct examination.	4
Failure, in some cases, of agents to provide property owner with a written disclosure of lien against real property.	2
Failure to issue a reconveyance of title, a certificate of discharge or a full lien release.	2
Failure, in some cases, of agents to provide accurate records of fiduciary funds collected.	1
Failure of agents to provide clients payment schedules and/or payment receipts.	1
Failure to respond to Division requests for records in a timely manner.	1
Failure of agents to submit records to examiner for examination.	1
Total	**129**

Source: Division of Insurance

Surety company representatives contacted during this review maintain that the Division found them in violation when the violation was not within their control or responsibility. They also maintain that the Division did not offer a means for compliance in the areas cited.

The Division reported that efforts were made to improve problems relating to compliance by surety bail bond agents and companies. However, because compliance did not improve discernibly, in 2002 the Division provided an educational forum for company staff. An invitation was sent to 22 insurers requesting that a representative responsible for compliance be in attendance. Twelve insurers responded and sent a representative. Topics addressed at the meeting included an overview of the current marketplace and consumer concerns; review of Colorado insurance laws relating to bail bonds and enforcement activities; Division expectations regarding insurer compliance; and, market conduct examinations.

Cash and professional cash bail bonding agents have not fallen under the same scrutiny as the surety companies with regards to market conduct examinations. In the late spring of 2003, the Division began a series of workshops for cash and professional cash bail bonding agents to help foster compliance with the law. However, at that time, the Division realized that, statutorily, cash and professional cash bail bonding agents are required to keep so few records that market conduct examinations would not be feasible. The lack of required records by all agents, surety, cash and professional cash, is discussed further in the Analysis and Recommendations Section of this review.

Enforcement

The Division has a variety of enforcement mechanisms available to it that are created by statute. The Division may take disciplinary action by denying, suspending, revoking, or refusing to renew the license of a bail bonding agent. After a hearing, the Division may impose civil penalties in lieu of revoking or suspending a license.

The Division reports complaint and enforcement action information to the National Association of Insurance Commissioners (NAIC) for inclusion in the NAIC's national database. The NAIC database includes information regarding all insurance agents and companies, but does not report aggregate numbers of complaints and actions by bail agents. The database provides histories by name, social security number or date of birth of specific agents.

Any individual bail bonding agent may receive more than one type of discipline per incident. The following table illustrates the number and types of enforcement actions imposed by the Division from fiscal year 98-99 through fiscal year 02-03.

Table 10
Bail Related Final Agency Actions

Type of Action	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Revocation	2	2	1	0	2
Surrender of License	0	4	0	0	0
Probation (no suspension)/Practice Limitation	0	0	0	1	4
License Denied	0	1	0	1	1
Fine	21	1	7	5	32
Stipulated Agreement/Consent Order	22	2	8	6	35
Suspension without Probation	5	1	1	1	0
Cease and Desist	0	0	0	0	1
Restitution	1	0	0	1	4
Summary Suspension	1	0	1	4	0
TOTAL	52	11	18	19	79

Source: Division Internal Enforcement Action Tracking Database

The Division handles many disciplinary actions through in-house stipulated agreements. However, the Division also refers many cases to the Attorney General's Office (AGO).

A review of Division and AGO records indicates that as of June 30, 2003, there were 39 bail related cases pending at the AGO. These cases have been there from 26 to 1,144 days with an average of 375 days. These cases generally involve issues such as failing to return collateral, misappropriation or theft of premium, failing to comply with final agency orders, failing to disclose felony convictions, and new felony convictions.

Forfeitures

The 1995 sunset review of the bail bond regulatory program stated that there were 485 forfeited bond complaints made to the Division in 1994. Since the inception of the On-the-Board system in 1999, which prohibits agents from writing further bonds when they are On-the-Board for a forfeited bond, and entire surety companies from writing bonds if one of their agents remains On-the-Board, the amount of bond forfeitures has greatly declined.

In order for the Division to use an agent's qualification bond to pay an unpaid forfeiture to the court, the court must notify the Division of the forfeiture. The bail bonding agent is notified of the complaint of forfeiture and is given another opportunity to pay the forfeiture before the qualification bond is used to pay the forfeiture. The Division can only use an agent's qualification bond after an administrative hearing has been held on the forfeiture.

Division staff and staff of the AGO report that they have not gone to hearing against an agent's qualification bond since the inception of the On-the-Board system. However, the Division still receives complaints from Colorado courts of unpaid forfeitures.

Specifically, the Division has received and acted on approximately 162 forfeiture complaints during the last five fiscal years. Approximately 60 of these complaints were made against three of the five surety companies that have either become liquidated, suspended or have entered in to a voluntary no sales agreement with the Division within the last few years. The remaining 100 complaints were settled only after the Division initiated an investigation, even though the bail bonding agent had 120 days to pay the forfeiture before a complaint was made to the Division.

Representatives of the cash and professional cash bail bonding agents allege that the State of Colorado is losing a substantial amount of money due to unpaid forfeitures by surety companies that have gone out of business. Conversations with representatives of the Judicial Department indicate that even though these companies were in trouble, the vast majority of forfeited bonds were paid. The Judicial Department reports that out of a total of $129,335 of forfeited bond amounts assessed, $19,235 was either vacated, released or set aside, and $54,100 remained unpaid by these companies. Judicial Department staff also concedes that court staff was told of these troubled companies and that court clerks may not have even tried to collect on the remainder of the unpaid forfeited bonds and that they too may have been paid if the companies were notified of the forfeitures.

Analysis and Recommendations

During the course of this sunset review, the Department of Regulatory Agencies (DORA) solicited input from a variety of sources. Some of these issues are discussed in the recommendations that follow. Those that are not discussed were found to have fallen outside the scope of the statutory criteria of sunset reviews. A number of significant issues were presented and considered, including:

* DORA met with representatives of the cash bail industry who have developed a program to track bail in the state of Colorado. CO-Bond, is a web-based system developed to track bail bonds on a statewide level. The intent of this system is to develop a program to support the Division of Insurance (Division) in regulating bail bonding agents, as well as assisting bail bonding agents in complying with Division requirements. This system was further developed to include not only bail bonding agent information, but also bond information and its entire progress through the judicial system.

  In order for the CO-Bond system to succeed, it must be utilized by all courts, jails, bonding agents, the Division and other state agencies. Additionally, the Judicial Department is key to the success of the CO-Bond system. However, as of the time of this writing, the developers of CO-Bond had not yet contacted the Judicial Department with their proposal. In interviews with DORA staff during this review, staff of the Judicial Department expressed serious concern that a program developed by cash bonding agents would be used statewide to regulate the bail bonding industry. They were also concerned that confidential juvenile records may be needed for the successful implementation of such a system.

* A proposal to impose a $50,000 bond requirement on Colorado's 481 surety bail bonding agents was considered. This review found no evidence to support the notion that Colorado is losing money because surety companies are failing to pay bond forfeitures. This issue is discussed in more detail on page 23 of this report.

* Some stakeholders support a change to the premium tax structure as discussed in Recommendation 2 of this report.

* A proposal to require continuing education for bail bonding agents and for the creation of a set rate for premium charges was also submitted.

Recommendation 1 – Continue the regulation of bail bonding agents by the Colorado Division of Insurance until 2013.

The primary justification for regulation of the bail bond industry is protection of those citizens in need of a commercial surety. The public, in general, is also protected because the bond serves, in theory, to prevent a nonappearance in court by the defendant.

The potential threat to the public presented by bail bonding agents argues for continued regulation. As an example, 12 market conduct examinations conducted between 2001 and 2003 uncovered 129 instances of noncompliant business practices. These practices included failure of agents to provide lists of collateral to the surety company, failure to properly report premium, and failure to provide written premium or collateral receipts. These types of practices have the potential to harm consumers and, in an unregulated market, could result in significant economic harm to Colorado citizens.

The General Assembly has historically considered the amount of discipline imposed against a regulated occupation as one indicator of whether or not continued regulation is needed. Research conducted for this review shows that from fiscal years 98-99 through 02-03, there were approximately 500 licensed bail bonding agents each year. During the same period, the Division took 179 final agency actions.

Sunset criteria direct that this analysis consider the least restrictive form of regulation consistent with the public interest. Other states employ systems that forego state licensing of bail bonding agents. In Illinois, for example, defendants pay 10 percent of the bond directly to the clerk of the court. When the conditions of the bail bond have been performed and the accused has been freed from all obligations, he or she receives 90 percent of the sum deposited. Therefore, the court retains 10 percent, which is actually one percent of the total bond as bail bond costs.

The state of Hawaii does not license bail bonding agents. Bail bonding agents were regulated in Hawaii, but the legislature removed the licensing program from the counties in 1990.

According to a 1992 report by the State Auditor of Hawaii, courts impose certain requirements on bail bonding agents and provisions of the state's insurance law also apply to the industry. The auditor's report did find some problems in the industry. For the most part, these problems mirror the problems in Colorado although the degree of the problems in Hawaii may be less than what is found in Colorado.

The auditor's conclusion was to tighten statutory requirements to prevent bail bonding agents from charging additional fees over the 10 percent ceiling imposed by the law. However, the auditor's report recommended against creating licensing because of the lack of public harm occurring in the unlicensed marketplace and the barrier to entry created by the imposition of a licensing scheme.

Clearly, then, less restrictive approaches to regulating the bail bond industry exist. Several individuals interviewed in the conduct of this review reported a previous legislative attempt to implement a system in Colorado similar to the Illinois model. This approach was rejected by the General Assembly.

Discussion with representatives of the bail bond industry revealed significant opposition to such reforms. Stakeholders argue that the Illinois model, if implemented in Colorado, would eliminate the bail bond industry in this state. Yet another model, one that allows regulation through counties, as found in Texas, is seen by the Colorado industry as too burdensome. Industry objections point out that such a regulatory scheme requires that the bail bonding agents secure multiple licenses.

The Hawaii model, however, would not threaten the industry. Instead of a licensing scheme, Hawaii relies on the deterrent effect of criminal sanctions to extract compliance from bail bonding agents. Much of the strength of Hawaii's approach lies in the fact that insurance companies that back bail bond agents are licensed to sell insurance. The same theory applies in Colorado except for the cash and professional cash bail bonding agents. Should Colorado adopt a model similar to the Hawaii model, these independent businesses would likely be forced to become agents of insurance companies that write bail. Such a reform would impact a small number of businesses. At the time of this review, Colorado licensed only 8 cash bail bonding agents and 26 professional cash bail bonding agents. However, the majority of these agents (24 of 34) are also licensed as surety bail bonding agents and write bonds for surety companies in addition to their cash/professional cash bail bonding businesses.

In conclusion, while there are less restrictive alternatives to Colorado's regulatory model, the potential impact on businesses, including the elimination of businesses, coupled with the failure of past legislative efforts to reform, argues against radical reform.

Therefore, this review recommends that the General Assembly continue regulation but enact a series of specific reforms contained in the following recommendations.

Recommendation 2 – Require cash and professional cash bail bonding agents to file rate filings with the Division of Insurance and authorize the Division to promulgate by rule rate filing requirements.

Colorado law requires that cash and professional cash bail bonding agents and domestic surety companies pay premium tax of one percent of all bail bond premiums charged. Foreign surety companies pay two percent of premiums charged. However, there is no oversight of the premium amounts charged by bail bonding agents. In other words, bail bonding agents are given discretion in the premium they charge and they self-report these premiums to the Division. Payment of premium tax, then, is based on the "honor system" or self-reporting. In interviews with bail bonding agents, it was reported that some bail bonding agents will collect a five percent premium on a bond, pay one percent of that to the Division as premium tax, then collect another five percent premium on the same bond, and not pay premium tax on that portion. This was stated as a common scenario in the bail industry.

As part of this review, DORA examined premium tax reporting records of the Division and compared that data with bail bond aggregate data kept by the Judicial Department's Integrated Colorado On-line Network (ICON) system. That comparison revealed that 13 of the 34 cash and professional cash bail bonding agents underreported the total bond amounts of bonds written during calendar year 2002.

Further, the Division's recent market conduct examinations, found in Table 9 of this review, reveal numerous instances of noncompliance in the reporting of premium and payment of premium tax among the surety companies examined.

A July 1997 report by the Internal Revenue Service made similar conclusions regarding payment of state tax. The study found that one-third of the Colorado bail bonding agents studied failed to report or underreported state taxes. The report found:

> Noncompliance in the bail bond industry was initially identified in a project conducted by one of our districts through the Examination function. There appeared to be a relatively high incidence of nonfilers, and of those returns audited, there was often a lack of adequate books and records to support income and expenses claimed.
>
> The first indication that there was noncompliance in filing returns was observed by checking the filing records of persons advertising in the phone books. Of the names checked, almost a third were nonfilers.
>
> Two primary issues were identified during a preliminary study consisting of the examination of the returns of 12 bail bond agents. Unreported income and the deduction of payments into the agents' reserve accounts (commonly called Build Up Funds or BUF accounts) were the two prevalent issues. Also, personal expenses were frequently being deducted as business expenses. [2]

The IRS report offered the following assessment of the industry:

> Bail bond businesses are generally operated on the cash basis method of accounting. Income is recognized when received, and expenses are claimed when paid. In addition, this industry tends to be cash intensive, in that bail agents often prefer to collect cash rather than checks, due to the nature of their clients. Gross receipts are usually 50 percent to 80 percent cash.
>
> Bail bond businesses reflect business practices typical of other small businesses in terms of the lack of internal control. The work force generally consists of the bail agent and perhaps one or two employees. This means that office functions such as writing bail, collecting fees, and depositing receipts may all be done by the same person.

[2] http://www.irs.gov/pub/irs-mssp/bail.pdf as downloaded on March 31, 2003.

> The surety company provides a measure of control in terms of tracking premiums earned due to its weekly reporting requirement and the fact that it tracks the bonds by serial number. Bail agents are required to account for every bond in their possession. However, the surety company does not control the actual collection of the premiums that the bail agents earn on each bond they write. The surety company also is not involved in any other cash collections such as cash collateral and additional fees collected for travel, court costs, and long distance phone calls.[3]

The most straightforward solution to this problem, supported by at least one stakeholder organization representing a coalition of bail bond agents, involves a simple change to the method by which the premium tax is computed. If premium tax were computed based on a calculation of 0.1 percent of the amount of the bond written by a bail agent and 0.2 percent for bonds underwritten by foreign surety companies, Colorado would be receiving the equivalent of one percent or two percent of a 10 percent premium.

For example, on a $10,000 bond, a bail bonding agent who charges 10 percent would earn $1,000. Currently, that same agent would owe $10 in premium tax. If the state were to compute tax based on 0.1 percent of the bond amount ($10,000), the bail bonding agent would still owe $10.00.

Since the Judicial Department can supply the Division with the amount of total bonds written by agent and by surety company, the Division would expect a minimum of 0.1 percent of that total from cash and professional cash bail bonding agents and domestic surety companies and 0.2 percent from foreign surety companies. Agents who write bonds in Denver City and County Court and the other municipalities not recorded in the ICON system will theoretically pay a total premium tax payment over the amount derived from the information reported by ICON.

Opponents of this structure argue that it would force bail bonding agents to write at a minimum level of 10 percent. Thus, they contend, defendants may be denied access to bail since they may not be able to afford the 10 percent premium. It is impossible to dispute this argument because it is not possible to determine what portion of bail bond premiums, if any, are charged below the state mandated ceiling of 15 percent.

The most significant hurdle faced by this reform is the possibility that the proposed change requires compliance with Colorado’s Taxpayer’s Bill of Rights (TABOR) law.

The second policy option is for the General Assembly to require bail bonding agents to file rates.

[3] Ibid.

The Division has attempted to require surety companies to file premium rates for bail bonds but the industry has resisted, arguing that it is impossible to file rates because of the great variance in cases. As an example, bail bonding agents assert they charge a higher premium if they have to travel to a distant county or if they are called in the middle of the night. Despite their earlier objections, surety companies now file premium rates for bail bonding agents. However, the Division reports that these filings are often little more than a statement that premium rates are up to 15 percent.

This review does not concur with the *status quo* argument presented by the industry. There is no compelling reason why bail bond agents cannot establish rates based on the variables they cite, and file them with the Division. This single factor, in conjunction with data provided by the Judicial Department, would enable the Division to make a much more accurate determination of the amount of premium tax owed by these licensees.

In addition to the variables enumerated by bail bonding agents such as travel, time of day and so forth, some opponents to rate filings also cite the relative risk of the defendant not to appear as a factor in establishing the premium. We note first that this factor is taken into consideration by the judge, who is arguably more qualified to make this determination than anyone else, in setting the amount of the bail. Since the premium would be based on the amount of the bond, the bail bonding agent is already receiving higher compensation from such defendants. In any case, the bail bonding agent can include this factor in a rate filing if permitted by the Division.

In conclusion, the General Assembly should require cash and professional cash bail bonding agents and surety bail bonding agents to file premium rate filings. In addition, and to make the rate filings meaningful, the Division should be given specific rulemaking authority over bail bond rate filings.

Recommendation 3 – Create a bail advisory committee.

During the course of this review, DORA received numerous complaints concerning communication between the Division and the industry. Complaint handling, records requirements, and market conduct examinations are areas that were mentioned specifically.

A bail bond advisory committee existed prior to 1996 when it was repealed by the General Assembly. Recreation of an advisory committee could help to foster cooperation and improve communication between the industry and the Division.

The Division could be materially assisted in its administration of the bail bonding agent's law by an advisory committee. This committee could render advisory decisions to the Division in matters involving complaints and help to ensure that bail bonding agents properly report and pay premium tax. An advisory committee would also encourage increased communication and understanding between the regulators and the regulated industry. An advisory committee of five persons, appointed by the Commissioner of Insurance (Commissioner) could meet periodically to foster compliance in this industry.

DORA recommends that an advisory committee be reconstituted and that the committee be comprised of one attorney, one representative of law enforcement, one accountant, one representative of the cash/professional cash industry, and one representative of the surety cash industry. The Commissioner should be granted the authority to delegate duties to the advisory committee.

Recommendation 4 – Reform records and recordkeeping requirements and conform provisions regarding finance charges to Colorado's insurance laws.

During the course of this review, numerous stakeholders raised issues regarding recordkeeping requirements of licensees. The lack of consistent and updated statutory requirements results in inefficiencies for the Division and confusion of licensees regarding what information is required to be kept. In particular, the Division reports that lack of proper records requirements makes market conduct examinations and investigations difficult to perform.

This recommendation identifies two broad areas for reform. Within those two areas, numerous specific changes may be identified to improve state requirements.

4A – Require a business address and enact recordkeeping requirements.

One of the primary functions of occupational licensing is to enable the state to locate practitioners. This function is essential for execution of the public protection component of the regulatory scheme.

The present requirement that a licensee provide an address to the Division falls short of the minimum level of oversight required to effectively administer an effective program. Interviews conducted as part of this review revealed that bail bonding agents frequently conduct business from automobiles. Addresses provided to the Division may be the home of a relative or other acquaintance. Such scenarios make it difficult for consumers to contact bail bond agents regarding return of collateral and other issues and complicates the regulatory role of the Division.

By requiring that licensees provide the Division with an accurate place of business, the Division will be able to conduct market conduct examinations, serve subpoenas, and carry out other administrative functions more efficiently.

Second, current record and recordkeeping requirements for bail bonding agents are severely inadequate and hinder the Division's ability to resolve complaints and determine compliance. Requirements that bail bonding agents provide adequate receipts and agreements to indemnitors are virtually nonexistent. Surety bail bonding agents are only required to provide to the surety company a list of collateral taken within 20 days of receipt of the collateral and to maintain copies of the lists for two years. Colorado law requires that an arrangement for the payment of all or part of the premium be in writing, but it does not require that it be provided to the consumer or retained in the agent's records.

Although there is a statutory prohibition against bail bonding agents charging more than 15 percent of the total bond amount in addition to bond filing fees and the actual cost of storage of collateral, there is no requirement that a bail bonding agent provide or maintain records pertaining to premiums charged nor commissions or fees paid. The lack of these records makes it difficult to determine whether agents comply with Colorado statutes and hinders the Division's investigative process. The Division has received bar napkins and matchbooks with dollar amounts on them from licensees when requesting information during their investigative process.

Finally, the regulation of bail bonding agents should be made consistent with the regulation of insurance producers regarding charging interest on unpaid premium.

The following statutory changes should be implemented to facilitate improved recordkeeping by bail bonding agents and the information provided to consumers and the Division.

Section 12-7-108, C.R.S. should be amended as follows:

> ~~Bonding Agreement - requirements -payment schedule~~ PLACE OF BUSINESS - RECORDS - AGREEMENTS - PAYMENT SCHEDULES – DISCLOSURE STATEMENTS
>
> (1) AN ~~bonding~~ agreement CONCERNING BAIL shall be in writing and signed by the bail bonding agent and the DEFENDANT AND/OR THIRD PARTY INDEMNITOR ~~principal~~. If the ~~principal~~ DEFENDANT is illiterate or does not read the English language, such bail bonding agent shall note on the PRIMARY agreement that he or she or a third party has read or translated the ~~bonding~~ agreement to the DEFENDANT AND/OR THIRD PARTY INDEMNITOR ~~principal~~, and a copy of the translation shall be attached to the PRIMARY agreement. PREMIUM RECEIPTS MUST BE SIGNED, DATED AND LIST THE AMOUNT OF THE BOND PAID AND THE ORIGINAL GIVEN TO THE DEFENDANT OR THIRD PARTY INDEMNITOR.
>
> (2) EACH BAIL BONDING AGENT SHALL HAVE AND MAINTAIN A PLACE OF BUSINESS IN THIS STATE THAT IS ACCESSIBLE TO THE PUBLIC AND WHERE THE BAIL BONDING AGENT PRINCIPALLY CONDUCTS TRANSACTIONS UNDER THE AGENT'S LICENSE. THE PLACE OF BUSINESS MAY NOT BE A POST OFFICE BOX.
>
> (3) AS A MINIMUM REQUIREMENT FOR PERMANENT OFFICE RECORDS, EACH BAIL BONDING AGENT WHO IS ENGAGED IN THE BAIL BOND BUSINESS SHALL MAINTAIN A DAILY BOND REGISTER THAT IS THE ORIGINAL AND PERMANENT RECORD OF ALL BONDS OR UNDERTAKINGS EXECUTED BY THE LICENSEE AND THAT IDENTIFIES THE:
>
> > (a) NAME OF INSURER AND THE NUMBER OF THE POWER OF ATTORNEY FORM, IF APPLICABLE;
> >
> > (b) DATE THE BOND WAS EXECUTED;

(c) NAME OF THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR;

(d) AMOUNT OF THE BOND;

(e) PREMIUM CHARGED;

(f) PREMIUM REPORTED TO THE SURETY COMPANY;

(g) SECURITY OR COLLATERAL RECEIVED;

(h) DATE THE SECURITY OR COLLATERAL WAS RECEIVED AND THE DATE RELEASED;

(i) INDEMNITY AGREEMENTS;

(j) PROMISORRY NOTES RECEIVED;

(k) WHETHER THE DEFENDANT FAILED TO APPEAR INCLUDING THE DATE THE DEFENDANT FAILED TO APPEAR;

(l) DISPOSITION OF THE BOND; AND,

(m) DATE OF DISPOSITION;

(4) EACH BAIL BONDING AGENT WHO ACCEPTS MONIES OR ANY OTHER CONSIDERATION FOR ANY BAIL BOND UNDERTAKING SHALL FOR EACH PAYMENT RECEIVED GIVE TO THE INDEMNITOR(S) A PRENUMBERED, SIGNED, RECEIPT AS EVIDENCE OF PAYMENT. THE PRENUMBERED, SIGNED, RECEIPT MUST STATE THE DATE, THE NAME OF THE PRINCIPAL, A DESCRIPTION OF THE CONSIDERATION OR AMOUNT OF MONIES RECEIVED AND THE PURPOSE FOR WHICH RECEIVED, THE NUMBER OF THE POWER OF ATTORNEY FORM ATTACHED TO THE BOND, THE PENAL SUM OF THE BOND, THE NAME OF THE INDEMNITOR(S) AND THE TERMS UNDER WHICH THE MONIES OR OTHER CONSIDERATION SHALL BE RELEASED. EACH BAIL BONDING AGENT SHALL RETAIN A DUPLICATE COPY OF EACH RECEIPT ISSUED AS PART OF THE AGENT'S RECORDS.

(5) THE BAIL BONDING AGENT SHALL KEEP AT THE AGENT'S PLACE OF BUSINESS ALL RECORDS PERTAINING TO TRANSACTIONS MADE UNDER THE LICENSE. THE LICENSEE SHALL KEEP ALL THE RECORDS AS TO ANY PARTICULAR TRANSACTION AVAILABLE AND OPEN TO THE INSPECTION OF THE COMMISSIONER DURING NORMAL BUSINESS HOURS FOR THE THREE YEARS IMMEDIATELY AFTER THE DATE OF RELEASE OF THE BOND AND RETURN OF THE COLLATERAL, IF APPLICABLE.

(6) A BAIL BONDING AGENT SHALL MAINTAIN AT THE BAIL BONDING AGENT'S PLACE OF BUSINESS:

(a) RECORDS OF ALL BAIL BONDS THE BAIL BONDING AGENT EXECUTES OR COUNTERSIGNS, SO THE PUBLIC AND THE DIVISION MAY OBTAIN ALL NECESSARY INFORMATION CONCERNING THOSE BAIL BONDS;

(b) COPIES OF ANY RECEIPTS ISSUED TO THE INDEMNITOR(S) WHO PAY THE MONEY FOR THE PREMIUM AND/OR THE COLLATERAL AGREEMENT SIGNED BY THE BAIL BONDING AGENT WHO POSTS THE BAIL BOND;

(c) AN EXECUTED AGREEMENT SIGNED BY THE BAIL BONDING AGENT WHO POSTS THE BAIL BOND AND THE INDEMNITOR(S) WHICH AGREEMENT INCLUDES THE AMOUNT OF BAIL SET IN THE CASE, THE NAME OF THE DEFENDANT RELEASED ON THE BOND, THE COURT CASE NUMBER AND THE COURT IN WHICH THE BOND IS EXECUTED, THE PREMIUM CHARGED, THE AMOUNT AND TYPE OF COLLATERAL HELD BY THE BAIL BONDING AGENT AND THE CONDITIONS UNDER WHICH THE COLLATERAL WILL BE RETURNED;

(d) COPIES OF SIGNED AND DATED DISCLOSURE STATEMENTS AS REQUIRED BY SECTION 12-7-108(10), C.R.S.; AND,

(e) ANY ADDITIONAL INFORMATION THE COMMISSIONER MAY REASONABLY REQUIRE BY RULE.

(7) RECORDS REQUIRED TO BE MAINTAINED PURSUANT TO 12-7-101, ET SEQ., C.R.S., SHALL BE AVAILABLE FOR EXAMINATION BY THE COMMISSIONER OR THE COMMISSIONER'S REPRESENTATIVES PURSUANT TO 10-1-201, ET SEQ., C.R.S. THE COMMISSIONER MAY EXAMINE THE BUSINESS PRACTICES, BOOKS AND RECORDS OF ANY BAIL BOND AGENT AS OFTEN AS THE COMMISSIONER DEEMS APPROPRIATE.

(~~2~~)(8) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure, self-service public storage facility, no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or twenty dollars, whichever is more.

(~~3~~)(9) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing, SIGNED AND DATED BY THE BAIL BONDING AGENT AND THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR AND A COPY PROVIDED TO THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR, RETAINED BY THE BAIL BONDING AGENT and shall set forth the schedule of such payments. INTEREST ON UNPAID PREMIUM SHALL ONLY BE CHARGED BY A PREMIUM FINANCE COMPANY, OR, IF THE AGENT FINANCES SUCH UNPAID PREMIUM, SUCH FINANCING MUST COMPLY WITH UCCC REQUIREMENTS. ANY INTEREST CHARGED BY THE AGENT, SHALL BE CONSIDERED PREMIUM. APPROPRIATE PAYMENT OF PREMIUM TAX SHALL BY REQUIRED BY THE INSURER, CASH BAIL BONDING AGENT, OR PROFESSIONAL CASH BAIL BONDING AGENT.

If this recommendation is adopted, the provision contained in the Division's regulation 1-2-13 requiring submission of a residence address should be repealed.

4B – Require bail bonding agents to report on standard reporting form.

The Division struggles with the variety of reports submitted by bail bonding agents. In addition, many bail bonding agents completely fail to submit reports. The following table illustrates the numbers of reports required and received for the last two fiscal years.

Table 11
Bail Bonding Agent Annual Report Statistics

Report Due on November 1	Number of Agents Required to Report	Number and Percent of Report Not Filed	Number and Percent of Reports Improperly Filed	Number and Percent of Reports Not Filed in a Timely Manner
FY 00-01	523	147 - 28%	59 - 11%	81- 15%
FY 01-02	565	225 - 40%	11 - 2%	65 - 12%

Source: Promissor

The table above shows that in both fiscal years 00-01 and 00-02, 54 percent of the bail agents who were required to report either did not file reports at all, improperly filed their reports, or did not file in a timely manner.

Bail bonding agents should be required to report to the Division in a standard reporting format. Section 12-7-105(1), C.R.S., should be amended as follows:

> ~~Commencing November 1, 2000, E~~each licensed bail bonding agent shall provide a report to the division no later than November 1 of each year. Such report shall BE IN THE FORM AND MANNER THAT THE DIVISION REQUIRES AND include but is not limited to the following information:

Recommendation 5 – Require bail bonding agents to provide disclosure statements to consumers.

One of the theories supporting regulation of the bail bonding industry is that consumers generally lack the information needed to protect themselves and the concomitant power differential between buyer and seller. Even though one of the purposes of regulation is to level this playing field, regulation functions best when consumers are aware of the regulatory protections provided by the state.

In the bail bonding industry, a disclosure form should be provided to each client. The disclosure form should include, at a minimum, such information as name, business address and telephone number of the bail bonding agent; information concerning collateral, such as requirements for the issuance of receipts, requirements for return of collateral and storage fees; and, Division contact information for filing a complaint. The General Assembly imposed a similar requirement on mental health practitioners and it is generally accepted that this approach is successful in increasing protection of clients. The statute should require the bail bonding agent to retain a copy of this disclosure, with the signature of the indemnitor, in every file.

Section 12-7-108, C.R.S., should be further amended with the addition of the following language:

> (10) EVERY BAIL BONDING AGENT SHALL PROVIDE IN A FORM PRESCRIBED BY THE COMMISSIONER, A DISCLOSURE STATEMENT TO EACH INDEMNITOR. SUCH STATEMENT SHALL BE SIGNED AND DATED BY THE BAIL BONDING AGENT AND THE INDEMNITOR. A COPY OF THE SIGNED AND DATED DISCLOSURE STATEMENT SHALL BE RETAINED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

Such disclosure statement should include, at a minimum:

- The name, business address, and business phone number of the bail bonding agent; and
- Name, address and phone number of the underwriting surety company, if applicable.

- A statement indicating that:
  - Bail bonding agents are regulated by the Commissioner and the phone number and mailing address of the Division;
  - The client is entitled to receive information regarding the bail bonding agent's fee structure, the bail bonding agent's right to revoke a bail bond, and any rights that may accrue to the person(s) paying the premium; and,
  - The legal and administrative requirements regarding the return of collateral.

This recommendation accomplishes several goals. First, it provides the Commissioner with the statutory authority to develop a disclosure form, and it provides the Commissioner with guidance as to what information should be included in such a disclosure form. The Commissioner, as opposed to individual bail bonding agents, should develop the disclosure form to ensure that such forms provide adequate information in a format that is easy to read and understand.

Additionally, the disclosures mandated by the proposed statutory language will serve to enhance public protection by alerting those who pay premiums and/or furnish collateral as to the fact that bail bonding agents are regulated and the appropriate regulatory agency to which complaints should be submitted. This language helps to address the power differential discussed earlier by informing the consumer of his/her rights.

***Recommendation 6 – Update the grounds for discipline to include guilty pleas and pleas of* nolo contendere.**

Presently, the Division can discipline a bail bonding agent if the licensee has been convicted of a felony. Most licensing statutes also provide that grounds for discipline include entering a guilty plea or a plea of *nolo contendere*. While the distinction may appear academic, a defense can be mounted that only a conviction is grounds for discipline. This can increase legal costs for the Division.

Section 12-7-103(1)(c), C.R.S., should be amended to read:

> (c) Whether the applicant has been convicted of a felony or engaged in or committed an act described in section 12-7-106 (1) during the previous ten years, CONVICTION INCLUDES THE ACCEPTANCE OF A GUILTY PLEA OR A PLEA OF NOLO CONTENDERE;

In addition, conforming amendments should be added to section 12-7-106(1)(e), C.R.S.

Recommendation 7 – Remove "willful" standard for imposition of discipline.

The Division and the Attorney General's Office are hampered by the requirement that they prove "willful" failure to comply with or "willful" violation of any provisions of the Article or of any proper order, rule, or regulation of the Division or any court of the state.

The state enforcement agency should not have to prove that a licensee willfully violated the law. State licensing, by definition, exists in recognition of market failure in the particular industry, occupation or profession. The statutory scope of practice and grounds for discipline imposed for violation of that scope of practice exist to protect citizens. Proving the state of mind of a licensee, an extremely difficult burden, serves to thwart the state's attempt to protect its citizens. Licensees are afforded due process throughout disciplinary procedures, thus providing protection from overzealous enforcement.

Section 12-7-106(1), C.R.S., should be amended as follows:

> (b) ~~Willful~~ failure to comply with or ~~willful~~ violation of any provisions of this article or of any proper order, rule, or regulation of the division or any court of this state;

Recommendation 8 – Reinstate the appointments process.

From 1993 to 1999, section 10-2-415, C.R.S., required surety companies to report their active bail bonding agents to the Division. Notification was also required when an agent ceased working for the surety company. This process was commonly referred to as the "appointments process."

Although this requirement saved Division staff a considerable amount of time when investigating complaints, surety companies felt it was burdensome and over-reporting. The General Assembly ultimately repealed the provision.

However, the Division suspects that surety bonding agents are becoming licensed and renewing their licenses without current backing of an insurer. This is problematic because of the law requiring new bail bonding agents to work for a surety company for four years before being able to be licensed as a professional cash bail bonding agent. Absent the appointments process, verification of employment is not easily ascertained.

Presently, when a complaint is lodged, Division staff tries to determine for which surety company the applicable bond may have been written. Letters are sent out to all surety companies indicated in the licensee's file according to the agent's reports. In many instances, and unbeknownst to the Division, the bail bonding agent has become employed by another surety company. In other instances, an agent may have written the bond as a cash or professional cash bail bonding agent with no surety company backing.

Because a surety company is ultimately responsible for its agents and for the forfeitures of its agents' bonds, this is not an unreasonable requirement of surety companies. Surety companies will also benefit from this recommendation as they will be easily identified and alerted to alleged inappropriate behavior by their agents.

Section 10-2-415, C.R.S., should be re-enacted, and section 10-2-415.5, C.R.S., enacted to read as follows:

10-2-415. APPOINTMENT OF INSURANCE PRODUCER BAIL BONDING AGENT AS DEFINED IN SECTION 10-2-407(1)(f), C.R.S., BY INSURER – CONTINUATION RENEWAL - EXCEPTIONS.

(1) NO INSURANCE PRODUCER WITH BAIL BONDING AGENT AUTHORITY AS DEFINED IN SECTION 10-2-407(1)(f), C.R.S., SHALL CLAIM TO BE A REPRESENTATIVE OR AUTHORIZED OR APPOINTED AGENT OF, OR ANY OTHER TERM IMPLYING A CONTRACTUAL RELATIONSHIP WITH, A PARTICULAR INSURER OR ACCEPT APPLICATIONS ON BEHALF OF SUCH INSURER UNLESS SUCH INSURANCE PRODUCER BECOMES A PRODUCER APPOINTEE, APPOINTED BY THAT INSURER IN ACCORDANCE WITH THIS SECTION, TO ACT IN THE CAPACITY OF AN AGENT OF THAT INSURER.

(2) (a) UPON CONTRACTING WITH THE BAIL BONDING AGENT, THE INSURER SHALL NOTIFY THE COMMISSIONER OF INSURANCE OF EACH PRODUCER BAIL BONDING AGENT APPOINTMENT. EACH INSURER SHALL KEEP ON FILE WITH THE COMMISSIONER A CURRENT LIST OF INSURANCE PRODUCERS WHICH IT HAS APPOINTED TO SOLICIT BUSINESS ON ITS BEHALF. THE INSURER SHALL FILE WITH THE COMMISSIONER A LIST OF NEW APPOINTMENTS OF INSURANCE PRODUCERS. THE LIST MAY BE SUBMITTED TO THE COMMISSIONER MONTHLY OR AT SUCH OTHER LESS FREQUENT INTERVALS AS THE COMMISSIONER MAY PRESCRIBE. THE INSURER SHALL REPORT ALL PERTINENT APPOINTMENT INFORMATION AS PRESCRIBED BY THE COMMISSIONER, INCLUDING THE EFFECTIVE DATE OF APPOINTMENT.

(b) SUBJECT TO RENEWAL, EACH INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT SHALL REMAIN IN EFFECT UNTIL:

(I) THE INSURANCE PRODUCER'S LICENSE IS DISCONTINUED OR CANCELLED BY THE INSURANCE PRODUCER BAIL BONDING AGENT OR REVOKED BY THE COMMISSIONER; OR

(II) NOTICE OF TERMINATION OF THE APPOINTMENT IS FILED WITH THE COMMISSIONER BY THE INSURER.

(3) EACH ACTIVE INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT SHALL BE SUBJECT TO RENEWAL EFFECTIVE OCTOBER 1 OF THE YEAR IN WHICH THE PRODUCER'S BAIL BONDING AGENT LICENSE IS SUBJECT TO RENEWAL. A COMPUTER LIST OF ACTIVE INSURANCE PRODUCER APPOINTEES SHALL BE PRODUCED BY THE COMMISSIONER AND FURNISHED TO THE INSURER ALONG WITH A RENEWAL INVOICE STATING THE FEE REQUIRED FOR THE RENEWAL OF EACH SUCH ACTIVE INSURANCE PRODUCER BAIL BONDING AGENT APPOINTMENT.

(4) ANY APPOINTMENT WHICH IS NOT RENEWED ON OR BEFORE OCTOBER 1 SHALL BE DEEMED TO HAVE EXPIRED OR DISCONTINUED EFFECTIVE ON THAT DATE.

(5) THE COMMISSIONER MAY, ON OR BEFORE OCTOBER 31 OF ANY YEAR, RENEW THE APPOINTMENTS OF AN INSURER WHO HAS FAILED TO PAY THE APPOINTMENT RENEWAL FEE BY OCTOBER 1 UPON RECEIPT OF THE RENEWAL INVOICE TOGETHER WITH THE RENEWAL FEES DUE AND THE APPLICABLE LATE PENALTY FEE.

(6) NOTWITHSTANDING ANY PROVISION OF SUBSECTIONS (1) TO (5) OF THIS SECTION TO THE CONTRARY:

(a) AN INSURANCE PRODUCER BAIL BONDING AGENT MAY NOT SHOW THE BENEFITS, RATES, AND FEATURES OF INSURANCE PRODUCTS OF COMPANIES BY WHICH THE PRODUCER HAS NOT BEEN APPOINTED.

(b) IF AN INSURANCE PRODUCER BAIL BONDING AGENT WHO SEEKS TO PLACE A RISK OR POLICY WHICH THE COMPANY APPOINTING THE PRODUCER BAIL BONDING AGENT CANNOT ACCEPT FOR ANY REASON, THE PRODUCER BAIL BONDING AGENT MAY PLACE SUCH RISK IN ANOTHER COMPANY DOING THE SAME TYPE OF BUSINESS WITHOUT BEING APPOINTED BY SUCH OTHER COMPANY; EXCEPT THAT NO INSURER SHALL BE REQUIRED TO ACCEPT A RISK FROM A PRODUCER WITH WHOM THE INSURER DOES NOT HAVE A CONTRACTUAL RELATIONSHIP. NOTHING IN THIS PARAGRAPH (b) SHALL BE DEEMED TO SUPERSEDE ANY PROVISION CONTAINED IN A CONTRACT BETWEEN A PRODUCER BAIL BONDING AGENT AND A COMPANY.

10-2-415.5. TERMINATION OF BAIL BONDING AGENT APPOINTMENT - NOTICE. (1) UPON TERMINATION OF THE BAIL BONDING AGENT APPOINTMENT OF AN INSURANCE PRODUCER BAIL BONDING AGENT, THE INSURER SHALL WITHIN FIFTEEN DAYS NOTIFY THE COMMISSIONER AND THE APPOINTEE OF SUCH TERMINATION. THE COMMISSIONER MAY REQUIRE THE INSURER TO DEMONSTRATE THAT THE INSURER HAS MADE A REASONABLE EFFORT TO GIVE SUCH WRITTEN NOTICE TO THE INSURANCE PRODUCER BAIL BONDING AGENT.

(2) IN THE EVENT THE TERMINATION IS FOR ANY OF THE CAUSES LISTED UNDER SECTION 10-2-704, 10-1-127, 10-2-801, 12-7-106, 12-7-109, THE INSURER SHALL NOTIFY THE COMMISSIONER OF THE REASON AND IF THE COMMISSIONER SO REQUESTS, THE INSURER SHALL PROVIDE ANY INFORMATION, RECORDS, STATEMENTS, OR OTHER DATA PERTAINING TO THE TERMINATION WHICH MAY BE USED BY THE DIVISION OF INSURANCE IN ANY ACTION TAKEN PURSUANT TO SECTION 10-2-801 AND 12-7-106.

(3) ANY INFORMATION, DOCUMENTS, RECORDS, OR STATEMENTS PROVIDED PURSUANT TO THIS SECTION SHALL BE PRIVILEGED, AND THERE SHALL BE NO LIABILITY ON THE PART OF, NOR SHALL A CAUSE OF ACTION OF ANY NATURE ARISE AGAINST, THE DIVISION OF INSURANCE, THE INSURANCE COMPANY, OR ANY AUTHORIZED REPRESENTATIVE OF EITHER.

(4) IN ADDITION TO ANY OTHER PENALTY OR LIABILITY AUTHORIZED BY LAW, THE FAILURE OR REFUSAL OF ANY INSURER TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1) OR (2) OF THIS SECTION SHALL BE CAUSE FOR THE ASSESSMENT AGAINST THE INSURER OF A CIVIL PENALTY OF ONE THOUSAND DOLLARS FOR EACH SUCH FAILURE OR REFUSAL.

Recommendation 9 – Update penalties for prohibited activities.

The current language in section 12-7-109(2), C.R.S., makes a violation of subsection (1) of that section a misdemeanor. Colorado courts have found that bail bonding agents hold a position of trust and there is, therefore, a strong public policy interest in bail bonding activities. This review has found that citizens can suffer significant economic and personal harm at the hands of bail bonding agents. The current criminal provisions can be interpreted to require that all violations by bail bonding agents be prosecuted as misdemeanors. Certain provisions of Title 10 apply to bail bonding agents and, their actions may constitute violations of other criminal laws of Colorado. In order to adequately protect the citizens of Colorado, prosecutors should be afforded a full range of options to address violations of Colorado law.

Section 12-7-109, C.R.S., should be amended as follows:

(2) Any licensee who violates any provision of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. ANY CRIMINAL PENALTY PROVIDED FOR VIOLATION OF ARTICLE 7 OF TITLE 12, C.R.S., SHALL BE IN ADDITION TO, AND NOT EXCLUSIVE OF, ANY APPLICABLE PROVISION OF TITLE 10 AND TITLE 18 C.R.S.

Recommendation 10 – Update collateral provisions.

It is common practice for individuals in need of a bail bond to leave something of value with the bonding agent as collateral. Bail bonding agents are required to release the collateral upon receipt of the bond release. In many cases, though, the bond release is never presented to the bail bonding agent and the collateral is never released. Bail bonding agents who have not received a bond release two years after posting the bond must contact the court where the bond was posted to obtain a bond release and release the collateral to the defendant and/or third party indemnitor, within 10 working days if a bond release has been issued by the court.

In addition, defendants and/or third party indemnitors may be responsible to the bail bonding agent for other obligations related to the bond, such as bail recovery expenses. The Division has allowed bail bonding agents to hold collateral for expenses related to the bond. However, it is not clear that the statute allows for this. The General Assembly should clearly authorize bail bonding agents to hold collateral for obligations related to the issuance of the bond. Appropriate disclosures and agreements between the bail bonding agent and the defendant and/or third party indemnitor should be required to protect all parties, including a description of possible charges and an itemization provided to the defendant and/or third party indemnitor of the additional obligations.

Section 12-7-108, C.R.S., should be further amended to read:

> (11) THE BAIL BONDING AGENT MAY USE COLLATERAL RECEIVED FROM THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR UNDER THIS ARTICLE TO SECURE THE FOLLOWING OBLIGATIONS:
>
> > (a) COMPLIANCE WITH THE BOND ISSUED ON BEHALF OF THAT PRINCIPAL;
> >
> > (b) ANY BALANCE DUE ON THE PREMIUM, COMMISSION OR FEE FOR THE BOND; AND
> >
> > (c) ANY RELATED COSTS INCURRED BY THE AGENT AS A RESULT OF ISSUING THE BOND.
> >
> > (d) THE BAIL BONDING AGENT MUST PROVIDE AN APPROPRIATE DISCLOSURE AND OBTAIN THE AGREEMENT OF THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR TO USE COLLATERAL TO SECURE THE ABOVE OBLIGATIONS.

(12) IF A COPY OF THE COURT ORDER THAT RESULTS IN A RELEASE OF THE BOND BY THE COURT HAS NOT BEEN RECEIVED WITHIN THREE YEARS OF POSTING THE BOND, THE BAIL INSURANCE COMPANY AND/OR BAIL BONDING AGENT MUST CONTACT THE COURT WHERE THE BOND WAS POSTED TO OBTAIN A COPY OF THE COURT ORDER THAT RESULTS IN A RELEASE OF THE BOND BY THE COURT. IF THE BOND HAS BEEN RELEASED BY THE COURT THE BAIL INSURANCE COMPANY AND/OR BAIL BONDING AGENT MUST RELEASE THE COLLATERAL TO THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR, WHOEVER PUT UP THE COLLATERAL, WITHIN 10 WORKING DAYS OF RECEIPT OF THE COPY OF THE COURT ORDER THAT RESULTS IN A RELEASE OF THE BOND BY THE COURT.

Section 12-7-109, C.R.S., should also be updated as follows:

12-7-109, Prohibited activities - penalties. (1) It is unlawful for any licensee under this article to engage in any of the following activities:

(d.5) Except for the fee received for the bond, to fail to return any collateral or security within ten working days after receipt of a copy of the court order that results in a release of the bond by the court, UNLESS THE COLLATERAL ALSO SECURES OTHER OBLIGATIONS IDENTIFIED IN SECTION 12-7-108(4), BUT ONLY IF THE BAIL BONDING AGENT HAS PROVIDED AN APPROPRIATE DISCLOSURE AND OBTAINED THE AGREEMENT OF THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR AND HAS A COPY SIGNED BY THE DEFENDANT AND/OR THIRD PARTY INDEMNITOR OF SUCH DISCLOSURE AND AGREEMENT. A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written.

Recommendation 11 – The Division should be given clear authority to examine records and pursue adminstrative actions and enforcements.

The current bail statute does not clearly specify the Division's authority to examine records of cash and professional cash bail bonding agents. This impacts the Division's ability to ensure consumer protection through the pursuit of administrative actions and enforcements. This basic regulatory provision should be specifically established in statute.

A new section 12-7-113, C.R.S., should be added as follows:

12-7-113 - OTHER INSURANCE LAWS APPLICABLE IN ADDITION TO THE PROVISIONS OF THE BAIL BONDING AGENT STATUTE TITLE 12, ARTICLE 7, THE PROVISIONS OF TITLE 10, EXCEPT AS THEY ARE INCONSISTENT WITH THE PROVISIONS OR PURPOSES OF TITLE 12, ARTICLE 7, SHALL APPLY TO ANY PERSON REGULATED PURSUANT TO TITLE 12, ARTICLE 7.

Administrative Recommendation 1 – The Division should improve recordkeeping.

Colorado law requires the Division to keep records, as necessary, of all matters pertaining to its regulation of bail bonding agents, including copies of all applications, examinations, and reports filed by or completed on behalf of any bail bonding agent or person seeking licensure as a bail bonding agent. Complaints regarding any facet of the bail bond industry and summaries of actions taken by the Division against or on behalf of any such bail bonding agent must also be retained.

During the conduct of this review, standard information was not easily obtained. As examples, many sources of information had to be reviewed to determine the length of time the Division takes to investigate complaints. Additionally, the amount of time that the Attorney General's Office has taken to resolve cases in previous fiscal years could not be ascertained. These are important measurements of the efficiency of Colorado's regulatory system.

In addition, reports maintained by the Division were sometimes contradictory among themselves. Many of these concerns should be addressed when Promissor, the private company that is responsible for maintenance of the licensing database for all of the Division's licensees, implements its new licensing/enforcement action system in late 2003.

Even with the implementation of Promissor's new system, forfeitures should be tracked and forfeiture records should be retained by the Division. In conducting this review, DORA found that any complaint or inquiry in which the complainant was a court was counted as a complaint of forfeiture per the Division's instructions. Division records show that bond forfeitures were categorized as inquiries in some instances and as complaints in other instances.

Complaints of bond forfeitures by Colorado courts should be categorized as complaints, and the Division should maintain data on these complaints. Total amounts of forfeitures, agent and/or surety company names and dates should be retained by the Division.

Appendix A – Sunset Statutory Evaluation Criteria

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.