



Insurance Department

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Bail Bond Surety Oversight Board Meeting

(<https://insurance.utah.gov/licensee/other/bail-bond/board>)

Date: April 10, 2019

Time: Noon

Place: East Building, Copper Room

BOARD MEMBERS

xClay Carlos (Chair)	xRyan Cooper
xDominic Sanone (Co-Chair)	xTony Choate
xLt. Ken Jones	xCurt Oda
xChad Woolley	xReed Stringham (Non-Voting)

DEPARTMENT STAFF

Todd Kiser, <i>Ins. Commissioner</i>	xTracy Klausmeier, <i>P&C Director</i>	xCathy Burton, <i>Examiner</i>
xSteve Gooch, <i>PIO Recorder</i>	xPatrick Lee, <i>Finance Director</i>	

PUBLIC

Jack Reed	Patty Reed	Gerald M. Conder
Dyon Flannery	Gordon Wright	Melody Jenkins
Terry Smith	Henry Chandra	Vivian White

MINUTES — Not Approved

- **General Session (Open to the Public)**
 - Welcome / Clay Carlos, Chair (12:05 pm)
 - Adoption of Minutes for January 9, 2019 meeting
 - **Motion by Curt to adopt minutes. Seconded by Ryan. Motion passes 6-0. Dominic not present.**
- **Executive Session - If Needed (Closed to the Public)**
- **General Session (Open to the Public)**
 - **Approve Recommended Actions from Executive Session** – Not needed
 - **Summary of Reports / Cathy**
 - There's nothing to report at the present time. Going forward the UID is changing what will be reported.
 - When Cathy does an investigation, there will need to be a teleconference with the Board. The Board will give their recommendation, and the UID will take action based on those recommendations.
 - The agency recommendations report shows when licenses have lapsed, been suspended, or been revoked. The Board will need to make a recommendation for taking action on licenses, which will require another teleconference. Clay asks how often license lapses or revocations happen. Cathy says revocations and suspensions can be done for forfeiture judgments, but it's unclear how many happen a year. She hasn't ever had any who have wanted to be reinstated after a lapse. Clay asks if the actions only need to be taken for revocations. Cathy says that's correct.

- Applications will continue to be reported as they come in.
- The UID will begin reporting an itemized accounting of the bail account, which Reed will discuss later. Clay asks if that will be in the general session or if it will need to be executive session. Cathy says it will be general session.
- Clay asks how audits have been going. Cathy says at the present time she isn't conducting any. Tracy says that when Market Conduct moved into the Property & Casualty Division, Cathy began working P&C investigations. While audits aren't required, Cathy will audit annually when annual reports are sent in.
- **New Business**
 - Proposed changes to R590-186, Bail Bond Surety Business / Reed
 - Reed says the UID's objective with these changes was to get rid of jargon and legalese and make the rule simpler to read and understand. This was done primarily in the description of the application process. The packets also include a copy of a renewal application that the UID hasn't had before, even though the statute contemplates it. The UID will start using it, which will hopefully make it easier for renewals. It pares down the requirements that people need to meet for a renewal.
 - Reed also changed the rule because the UID was concerned about the length of time it takes to go through the investigation of a written complaint — it could take 6 months. The rule has been rewritten to say the UID will do the investigation, write a summary for the Board, the Board will give input, and then the UID will make a final decision and move forward with an enforcement action. It streamlines the process and eliminates the back-and-forth.
 - Dominic asks about R590-186-4, where it lists the financial requirements, and wants to know if they're listed in 31A-35-404. Reed says yes.
 - Chad says the rule is very well written and that the goal of getting rid of jargon was met.
 - Gordon Wright asks if Cathy can examine bank and property statements, instead of providing the CPA letter that is required every year. He says he gives his CPA financial statements, shows him liquid assets and property, then the CPA regurgitates it in a letter and charges him \$1,500. Then Gordon takes the same stuff and gives it to Cathy so she can see it. He'd like to avoid the CPA letter if he can. Reed says the statute says it has to be reviewed by a certified professional accountant, but now he doesn't have to produce the documents for Cathy — all he needs to give her is the letter. The purpose of the CPA review is to put the responsibility on a professional who has the skill and education to do it. Reed understands Gordon's quandary, but we're stuck with the language in the statute. Curt says the only way to change it is to talk to a legislator. He asks if the rule has been published yet. Reed says not yet; the UID wanted to get the Board's input first, but then we will put it through ASAP. Curt would like to have the rule text sent to everyone once it's filed. Steve says that's part of his process, and he will do so.
 - Quarterly accounting report for Bail Bond Administration Account (31A-35-407) / Reed
 - Reed notes that the above statute requires the UID to report the beginning and ending balance of the bail account every quarter, which we will start doing. Reed says the account doesn't change much. There are 3 expenditures: the cost of the quarterly meeting, the cost of reimbursement for board members, and the cost of Cathy's salary

for the work she does on bail matters. For the last quarter, the beginning and ending balances were the same: \$39,913.63.

- Clay asks how the account is funded. Patrick Lee, the UID's finance director, says it's listed in the statute. The account is funded by the bail bond assessment and any penalties that may be assessed during the year. Clay asks if the balance is carried over. Patrick says yes. The account is a general fund restricted account, and it was written so any funds that are collected remain in the account and don't ever leave. Any expenditures or collections are statutorily based and that's the only way money goes in or out of the account.
- Dyon Flannery asks if it's licensing fees and things like that, or just fines. Patrick says it includes licensing fees related to bail bond only. Dyon says that would include renewal fees too. Patrick says that's accurate. Any time that's spent on bail by Cathy, Tracy, Reed, Patrick, or Steve is charged to the bail bond account.
- Henry Chandra asks what percentage of the account is accrued by fees alone. Patrick says it's more than 90 percent, but it varies. In previous years, there were more penalties assessed; in recent years, the UID hasn't collected as much in fines, so the vast majority comes from the bail assessment. Patrick notes that the account has been running off a high balance for several years because revenues have been down.
- Dyon asks if the report will have retroactive data for the past 10 years. Reed says we have the records, but he'd like to know if there's a purpose for it before the UID goes to the trouble. Dyon says she wants to know what the average is because things fluctuate. She'd be interested to see how it changes over the years. Reed suggests including number of agents, number of agencies, and a year-end balance. Dyon says that would be good. Reed asks if Patrick could gather those numbers, and asks Dyon if she really wants 10 years. Dyon says she would, but whatever is easiest for us is good. Dyon says she's encouraged by the changes Reed has made.
- Clay asks if Patrick would describe the account as fairly balanced, or has it been dwindling. Patrick says it has fluctuated a bit because of revenue and expenditure changes. For a while, the bail bond program was subsidized by other areas within the UID, but that has been corrected so bail is on its own. The account has been collecting less revenue recently. Last year's expenditures were pretty high, but the high balance covered it. If that trend continues, we may need to make corrections to collect more revenue to cover the costs. The legislature increased the appropriation, which is just a change to the authority in the amount that can be spent. The issue is that we need to make sure we collect enough to meet the expenditures.
- Patrick says the majority of revenue in the account comes from the bail bond assessment. Clay asks if it's just agency licensing fees that fund it, or are agent licensing fees included. Patrick says technically it's both. Clay asks what would be the mechanism to increase bail bond agency renewal fees to get more in line with the account. Dominic says 10 years ago there was a major surplus in the account, so the Board lowered the fees because the money just sat there doing nothing. He said they cut the fee almost in half. Gordon says it was cut from \$500 every two years to \$200 every year. Patrick says a fee increase has been discussed, but nothing has been proposed because there's a fund balance. We'll have to be careful because costs have been a lot lower this year. We may want to hold off another year before we change it.

Clay says the renewal fees are cheap enough and he wouldn't have a problem with them being a little higher to meet expenditures.

- Curt asks if the \$39,000 is the current fund balance. Patrick says yes, as of the end of Quarter 2. It has remained the same over the quarter. The cash balance is different from the fund balance, and the cash balance fluctuates. Curt asks if we know the total of the expenditures that have been made in the first two quarters. Patrick says he can calculate it in a few minutes.
- At the end of the meeting, Patrick says the expenditures for the year so far are \$9,505.61.
- Annual bail bond agency renewals / Reed
 - Reed says one of the Board's duties is to give recommendations on license renewals. Renewals are due on July 15. The next meeting is July 10, and the next is in October. He thinks it would be better to have the next meeting after the renewals are received so the Board can make a recommendation about the renewals. The UID suggests putting off the July meeting until the first week in August, so it can present the renewal info to the Board. Clay asks if moving it only a couple of weeks is enough time to get the information ready. Cathy says she thinks it would be. Clay asks if the simplification of 186 will expedite her process. Cathy says extremely.
 - Henry asks what is the board's intention regarding renewals. Gordon notes that it's never been done before. Reed reads the relevant statute: "the board shall recommend to the commissioner action regarding the granting, renewing, suspending, revoking, and reinstating of bail bond agency licenses." He says it's pretty clear that the Board gets to make a recommendation regarding renewals. Dominic says he assumes that would only pertain to licenses that Cathy questions; if a license isn't up to specifications, she would bring it to the Board for their recommendation. Reed says Cathy would present a list of renewals, and the Board can make a determination. At least they would have names of the agencies that are seeking renewal.
 - Gordon says this was an issue when he was on the Board. It was determined that the Board isn't entitled to see the financial statements of the other bond companies, which is why Cathy reports that agencies meet the minimum requirements. Clay says he doesn't think that would be involved in renewals, because the Board doesn't even see the financial statements on initial applications.
 - Gordon reviews the code section about renewal (31A-35-401), and says the letter from a CPA isn't in the code, but it is in the rule. He says the previous version of the rule had certain requirements for specific years through 2017. Now that 2017 has passed, everything has to be done every year, including the letter from the CPA, but he doesn't see that requirement in the renewal code. It becomes a big burden for property bondsmen to do a full-blown renewal every single year, requiring a letter from a CPA. He can prove to Cathy that he has the liquid cash, and doesn't see the necessity for a CPA to regurgitate onto a piece of paper what he can show Cathy. Reed says that, as he reads the code, agencies have to comply with the same requirements for the initial license as they do for the renewal. Gordon says no, at the initial you have to put in 2 years of taxes, but at renewal you only do 1 year. Reed says the change no longer requires taxes at renewal. Tracy says the code says that if you're collaterally backed you only have to include taxes on the original application. The rest of the code section talks about things that are required every year. The UID

has the burden to verify that an agency has the collateral to support the bonds they're writing. Taxes are specific to the original application. Gordon asks if the code says an agency has to have a CPA write a letter. Tracy says no, because it wouldn't make sense at application. Gordon says if you can produce a bank statement, why does a CPA need to say that. Tracy says because the UID doesn't have the expertise to go through bank statements.

- Gordon asks if the rule can go back to the every other year requirements. What bothers him is having to pay a CPA for a letter that says he has the money, when he can just prove that himself. Curt says it would need a statutory change. He asks if there's a difference between what must be provided for a new license vs. a renewal. Reed says taxes aren't required for renewal, but the code says you still have to continue to meet the requirements of licensing. Chad says the issue isn't having a copy of the taxes, it's having an expert review them. Reed notes that tax returns don't have the information the UID is looking for — tax returns just show income. Curt asks if it's more a balance sheet that's needed. Reed says yes.
- Gordon says if you have an unscrupulous accountant, you could pay the accountant to lie, whereas with his way, he'll actually show Cathy the money. If you're worried about fraud, you could pay off a CPA a whole lot quicker than he could pay off Cathy.
- Reed says the application is clear: If you're collaterally backed, you produce the letter. Gordon says that's in the rule, but he doesn't see it in the code, and that from 2005 to 2018, we apparently didn't follow the law. Gordon says when he was on the Board, Brett Barratt made everyone do everything by the code, but now we're saying that was wrong and now we have to do this letter that we haven't had to do for the past 10 to 15 years. It's the rule that changed, not the code.
- Dyon suggests that maybe Gordon's accountant could give him a profit and loss statement plus assets at the same time he does his taxes. Gordon says he can, for an extra \$1,500.
- Dominic says the other change is not having to get an appraisal, just a current abstract of title from the recorder's office for personal property, and asks whether that's correct. Reed says yes, that's what the statute says. Dominic says that's a break for them. Reed says yes, it's either a certified appraisal, or a tax notice plus a title letter, or a current abstract of title from the county recorder.
- Gerald Conder notes that the renewal form says "prior year" and asks if that means licensing year or calendar year. Reed says licensing year, and he will add "licensing" to the renewal form.
- **Old Business**
- **Other Business**
 - Chad asks if his term is done June 30 since he was finishing Stephen Aina's second term, or if he can serve another. Steve says the Office of Boards & Commissions says a complete term depends on how long a person served it, and Chad and Curt didn't reach that threshold. They are both eligible for their own terms.
 - Henry says he applied to the Board and asks what he needs to do next. Steve says the UID has reviewed all applications and will let everyone know fairly shortly.
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- *Adjourned* (12:54 pm)

- Motion by Dominic to adjourn. Seconded by Ryan. Motion passes 7-0.
- Next Meeting: July 10, 2019 — Copper Room, East Building

2019 Meetings (Noon to 1:30pm)

Jan 9, 2019	Apr 10, 2019	July 10, 2019	Oct 9, 2019
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