



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Insurance Department

TANJI J. NORTHRUP
Interim Insurance Commissioner

Bail Bond Surety Oversight Board Meeting

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

Date: October 14, 2020

Time: Noon

Place: TELECONFERENCE ONLY
by telephone: **1-877-820-7831**
passcode: **827555#**

ATTENDEES

BOARD MEMBERS

xClay Carlos (Chair)
xDominic Sanone (Co-Chair)
Lt. Ken Jones
Chad Woolley

xTony Choate
Bonnie Johnson
xCurt Oda
xReed Stringham (Non-Voting)

DEPARTMENT STAFF

Tanji Northrup, *Interim Commissioner*
xPerri Babalis, *AG Counsel*

xTracy Klausmeier, *P&C Dir.* xDanny Schoenfeld, *Finance Dir.*
xSteve Gooch, *PIO Recorder*

PUBLIC

Patty Reed
Oscar Gonzales
Ali Jensen Chaffee
Joshua Massey

Gerald Conder
Robert May
Christie Ellis
Skip Pappas

Wayne Carlos
Vivian White
Dyon Flannery
Clyde Stevens

MINUTES — Not Approved

- **General Session (Open to the Public)**
 - Welcome / Clay Carlos, Chair (12:05 pm)
 - Roll call
 - Reading of anchor location determination / Clay
 - Adoption of Minutes for August 12, 2020 meeting
 - **Motion by Curt to adopt minutes. Seconded by Dominic. Motion passes 4-0.**
- **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**
 - Quarterly Accounting for Bail Bond Administration Account / Danny
 - Through the 3rd quarter (Oct. 1), \$4,100 has been collected and \$5,300 has been expended. Last year, the account closed with \$31,176.
 - Dominic asks what is the bulk of the expenditures. Danny says it's personnel expenditures, which is any time the UID devotes staff time to bail matters.
 - **Motion by Curt to approve. Seconded by Dominic. Motion passes 4-0.**
 - **New Business**
 - Proposed amendments to sections 31A-35-404 and -406 / Reed

- Since starting with the UID, Reed has been trying to streamline the licensing and renewal process for bail agencies, and this is the culmination of that effort.
- The most important changes are twofold: 1) A property-backed bail agency currently must supply a statement from a CPA plus other financial documents; this change narrows the requirement to just a CPA statement that verifies that the property-backed bail agency has enough assets to meet the statute. 2) Bonding limits are being moved from the rule and into the statute, and will require bail agencies to confirm that they meet the bonding limits at renewal.
- Clay asks if agencies will be required at renewal to say how much bail they have out. Reed says yes. Clay asks if the UID will take an agency's word for it, or randomly audit. He says it's very difficult for agencies to determine, and it's not that black-and-white. Reed says the UID will need to pick a point in time, which will let agencies determine the business they have out as of that specific point. Clay says coming up with a real-time number is next to impossible. Reed agrees and says since agencies need to have their applications by July 15, that June 1 might be a workable date. Clay says it might work for some companies, but it won't work for others. Some agencies may have to review thousands of cases. Reed says the UID wants to be flexible and reasonable, so a different date is fine. He'd like to know a reasonable amount of time that would allow everyone to comply. Clay expects that the folks at the UAPBA will likely have some conversation and will let the UID know what they think.
- Curt is concerned about moving this from rule to statute. People may need more flexibility for at least the next couple of years until it gets smoothed out. He says it might be smart to keep it in rule so the UID can make changes during the year. Reed says that's a valid point and says the statute just talks about the standards, which haven't been changed for many years. Curt suggests putting in statute that the UID will promulgate the rules to make it a viable method. Reed says he'll give it more thought about putting it back in the rule.
- Dominic agrees with Clay and says there isn't an avenue for an agency to get an accurate number if they have any volume. If a company has thousands of clients and the court records aren't accurate, it's impossible to get a number with any degree of certainty. There's a number of course, but it's almost impossible to gather the intel. Reed says the bonding limits are on the books now as a rule and assumes people are making an effort to comply with it. Curt notes that rules have the effect of law. Reed says he assumes people are already doing what the rule says, and assumes there's a process in place at every agency to track the information.
- Clay says most companies bond amounts are far in excess of what they have out. He says he's never been anywhere close to his full bond amount. That hasn't always been the case — at one time there was suspicion that an agency had gone over its bonding limit, and everyone had to prove that they weren't. It turned out that industry wide, almost nobody was over their bond. Clay says the bonding amount is almost irrelevant for the functioning of a bond company. What really matters is how much forfeiture do they have and are they paying it. Reed clarifies that Clay's perspective is that there should be no bonding limits because a) it's difficult to determine if you're in compliance or not and b) they don't really tell you anything worthwhile. Clay agrees. He thinks regulators should be more

concerned about an agency's forfeiture rate and whether they pay their forfeitures vs. how much bail they have out at a given time. He says an agency won't lose \$10 million at a time, they'll lose it in \$5,000 or \$10,000 increments.

- Tony agrees. He says he's nowhere near his bonding limit and never has been. The limit changes every day because on any given court date you could have 30 bonds exonerated and 3 or 4 added on the same day. The number changes daily no matter what you do. It's dependent on what the courts do and when they do it. Clay agrees and says having a specific date would help nail it down.
- Reed asks if they're saying that almost everyone is always below their bonding limit and it's more important to know if they're paying their forfeitures. Clay says yes. If the UID was paying more attention to forfeiture rates instead of how much bond they could possibly have, that would be more informative on deciding how to handle a company with potential solvency issues. There are companies out there with zero forfeitures and others that pay hundreds of thousands of dollars in forfeiture. His position is that the limit isn't relevant because not many people are at their limit. A company could be in trouble and be insolvent with \$100,000 of forfeiture even though they have a \$10 million bond.
- Curt says there may be a consideration of removing the limits from statute but keeping it rule for maximum flexibility. He thinks it might be good to have each agency submit an affidavit that they have made every effort to not exceed their limits. Reed says that's the direction he was headed. It sounds like it may be better to keep it in the rule.
- Dominic asks when a concrete decision will be made on the proposed rule changes. Reed says the only concern he's heard is the one about bail limits. He's thinking he'll take that out and leave it in the rule, and will keep the rest of the proposed rule as-is, unless the UAPBA has comments. He'll certainly send it out before the next meeting because proposed legislation has to be done by November.
- Dyon Flannery asks if surety-backed companies are still required to submit their qualifying power. Reed says nothing has changed for sureties. There wasn't anything specific about that in the code, so that's the change. Dyon says trying to show how much bail is out is very difficult. The judge will tell them if someone fails to appear, but they get no notification once the case is adjudicated. It would take a lot of work with the court to determine any of this.
- Dominic says this has been an issue in the past, but it's not really a problem after review because the courts were arbitrarily exonerating the bonds upon closure of the case. Not on purpose, but as an oversight. If the court docket is inaccurate, the company's outstanding limit is inaccurate, and it's up to the court. If there are thousands of them, it's almost impossible to do it correctly. Some courts are astute about it and others aren't, and agencies have no control over it.
- Curt says it may be a good idea to get the courts involved in the discussion because they have culpability in notifying statuses. Maybe we should invite them to participate in the discussion.
- Clay thinks the court could produce a number right now for each agency, and the bond agency would have to dispute it. Their number will be inaccurate for the reasons already discussed. He doesn't think the number would be accurate for most companies, but they could produce it.

- Discussion of meeting requirement in 31A-35-406
 - Curt says some agents felt that one meeting a year was a little onerous, but now that he thinks about it more, it's a lot easier than doing CE credits. One meeting isn't an onerous thing to have to comply with. He thinks calling in or attending in person is fine, as long as the UID can document that people attended. Clay agrees. He thinks a teleconference option for people who are in remote areas of the state should be an option. Being able to call in would alleviate some of the issue for people in the Uinta Basin and what not. Curt says the UID would need to make sure people were present at the beginning of the call and at the end of the call so we'd know they were there for the whole meeting.
 - Clay asks Steve if it's possible to have an anchor location for in-person attendees and a call-in option for remote people. Perri says legally yes, the Bail Bond Board approved electronic meetings years ago. Steve says the room where meetings are normally held does have telephone capabilities.
 - Curt notes that it would need to be a principal of the agency attending, not a secretary.
 - Reed says the statute currently says that a principal must attend the meeting. It seems that the UID could change the language to say "attend or participate by telephone." Curt suggests adding "and must be present for the entire meeting." Clay asks if that would involve a roll call at the beginning of the meeting and another at the end. Reed says he can put that in the statute. Clay says that would alleviate most of the concerns with people having to leave their jobs.
 - Dyon says it's a great idea, and it may be worth considering how people prove they're at a meeting. With the new affidavit option, if we allow people to attend over the phone or in person, when the minutes come out, it shows the people who attended. Would it be OK to send the minutes that show who was in attendance? Reed says that's up to the board, but the UID could accept that. Dyon says that would be an easy way to show who attended. Reed says he was just thinking it would be a statement on the application that people would sign. Curt says you'd want the date too, so the UID could verify it. Dyon says if all agencies have to do is sign and date that they were there, that would be fine too.
 - Dominic says he believes the affidavit was because it took a lot of effort for the UID to verify that agencies were at a meeting during the year. Reed says that's correct. It's easier for the UID if agencies filled out the application and signed it, versus the UID searching through the minutes. It's easier for the UID to trust that agencies are being honest. Clay says then the UID would be able to audit based on roll calls. Reed says that's correct. Clay says having the date would be helpful, like Curt suggested.
- Motion to change the statute regarding principals attending Bail Bond Board meetings as discussed by Curt. Seconded by Tony. Motion passes 4-0.
 - Old Business
 - Other Business
- Adjourned (1:05 pm)
 - Motion by Curt to adjourn. Seconded by Tony. Motion passes 4-0.
 - Next Meeting: January 13, 2021 — Beehive Room, East Building

2020 Meetings (Noon to 1:30pm)

January 8, 2020	April 8, 2020	August 12, 2020	October 14, 2020
-----------------	---------------	-----------------	------------------

2021 Meetings (Noon to 1:30pm)

January 13, 2021 <i>(Beehive Room)</i>	April 21, 2021	August 25, 2021	October 13, 2021
---	----------------	-----------------	------------------