

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

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by the agency submitted on 06/26/2018**

**PROPOSED PERMANENT REGULATION OF THE
COMMISSIONER OF INSURANCE**

June 26, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: NRS 679B.130; NRS 697.040, NRS 697.055, NRS 697.060, NRS 697.130, NRS, 697.137, NRS 697.330, and NRS 697.360

A REGULATION relating to bail; revising bail regulation to eliminate outdated concepts, providing clarity on license types, updating provisions related to duties of licensees, surety companies, records, agreements, collateral, and miscellaneous provisions, such as early surrender of defendants, and clarifying areas of frequent violations of law and frequently asked questions.

Section 1. Chapter 697 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. New Section: Bail Agents (NRS 697.040)

Only a licensed bail agent may:

- 1. Complete an application for a bail bond.*
- 2. Execute the bail agreement, other than clerical preparation.*
- 3. Execute a collateral receipt.*
- 4. Post a commercial bail bond with a court or with a jail in which a defendant is confined or have any communication with defendant while he or she is confined, except to obtain statistical information sufficient to refer the matter to the bail agent.*
- 5. Appear on behalf of the bail agent at a court proceeding for the purpose of obtaining continuation, exoneration or reduction of a posted bond, or obtaining other court action on it.*
- 6. Enter into a bail agreement with a defendant or indemnitor on behalf of a surety.*
- 7. On behalf of a surety, cause a defendant to be apprehended or surrendered by a bail enforcement agent.*

Sec. 3. New Section: Bail Enforcement Agents (NRS 697.055)

A bail enforcement agent shall not permit unlicensed persons to participate in the location, apprehension, or surrender of a defendant.

Sec. 4. New Section: Prohibitions

A licensee:

- 1. Is not acting for or on behalf of this State or any of its political subdivisions.*
- 2. May not wear any uniform or badge, or display insignia or logos which purport to represent law enforcement, peace officers, or otherwise implies any other official government representation at any time.*
- 3. May not engage an unlicensed person to act in the business of bail.*

Sec. 5. New Section: Pre-Licensing Education (NRS 679B.130)

A course of instruction in bail bonds must have been completed within 2 years immediately preceding the date of the application for the license.

Sec. 6. NAC 697.110 Purpose. (NRS 679B.130) The purpose of this chapter is to provide a comprehensive regulation of practices [~~common among bail bondsmen and provide guidelines for the enforcement of current statutes regulating bail bondsmen, bail solicitors and bail surety companies~~] *in the bail industry.*

Sec. 7. NAC 697.120 Definitions. (NRS 679B.130)

1. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 697.030 to 697.070, inclusive, have the meanings ascribed to them in those sections.

2. *“Bail agreement” means a contract for the undertaking of bail.*

3. “Commissioner” means the Commissioner of Insurance.

4. *“Collateral” means property pledged as security interest by a defendant or indemnitor in a bail transaction.*

5. *“Defendant” means a person who was arrested and in custody, who may be released subject to certain terms imposed by a court through bail posted with the court.*

6. *“Indemnitor” means a person who financially guarantees the defendant’s compliance with the terms of release by a court and appearance in court to the bail agent or surety by paying for the amount of bail if the court orders the bail bond forfeited.*

7. *“Final judgment of default” means a judgment entered by a court against a bond as provided in NRS 178.514.*

8. “Licensee” means a [~~natural~~] person licensed under chapter 697 of NRS.

9. *“Surety” means an insurance company authorized to write surety in Nevada.*

Sec. 8. NAC 697.125 Required score on examination. (NRS 679B.130) An applicant for a license as a bail [~~bondsman~~] *agent*, bail *enforcement agent, or bail* solicitor [~~or property bondsman~~] must achieve a *passing* score of at least 67 percent to pass the licensing examination.

Sec. 9. NAC 697.130 Unlicensed persons: Limitations. (NRS 679B.130) [~~No person other than a licensee may:~~]

~~[1. Complete an application for a bail bond, other than filling in the initial statistical information.~~

~~—2. Execute the surety contract, other than clerical preparation of a surety contract under the direct and immediate supervision of the licensee.~~

~~—3. Execute a collateral receipt, other than clerical preparation of the receipt under the direct and immediate supervision of the licensee.~~

~~—4. Post a bond with a court or with a jail in which a defendant is confined or have any communication with defendant while he or she is confined, except to obtain statistical information sufficient to refer the matter to the licensee. Any natural person may post a bond on behalf of a defendant if the person is not regularly engaged in the business of providing bail bonds.~~

~~—5. Appear on behalf of the licensee at a court proceeding for the purpose of obtaining continuation, exoneration or reduction of a posted bond, or obtaining other court action on it.~~

~~—6. Solicit bail bond business on behalf of a licensee.~~

~~—7. Perform any other function of a licensee.]~~

1. A person shall not engage in activities that require a specific type of bail license unless such person holds such specific type of license.

2. The duties of a licensee may not be assigned to an unlicensed person.

Sec. 10. NAC 697.210 Written statement. (NRS 679B.130)

1. Any [licensee] *bail agent* who desires to conduct business with one or more other [licensees] *bail agents* as a partnership must file a written statement *to the Division* setting forth:

(a) The nature of all business to be conducted by the partnership;

(b) The location of the principal place of the bail business of the partnership and of all other places for the conducting of partnership business; and

(c) The portion of ownership of each member of the partnership.

2. The written statement must be filed at least 10 days before the partnership transacts any business, and must be executed and verified by each partner.

Sec. 11. NAC 697.220 Changes in membership. (NRS 679B.130) Upon any change in the membership of a partnership, whether through death, dissolution, addition, deletion, *or expiration or* revocation of the license of any partner or otherwise, the *partnership is presumed to conclude as of the date of the change in membership. If the* survivors or *proposed* successors to the partnership business [~~if they~~] wish to continue to act as a partnership, *they* must *be properly licensed and* promptly file a new *written* statement pursuant to NAC 697.210. [~~If the change in membership arises through the death of a partner, the Commissioner may allow the partnership to continue to transact business as a partnership pursuant to NRS 683A.300.~~]

Sec. 12. NAC 697.230 Suspension of partner. (NRS 679B.130)

1. If the license of any partner is suspended, that partner may not engage [~~directly~~] in [~~the~~] *a bail* transaction[~~of bail~~], nor may he or she directly receive any commission on, or profit derived from, any transactions entered into by other persons during the period of suspension.

2. This section applies to profits or commissions earned during the period of suspension, even if the profits, commissions or other money are not actually received until after the end of the suspension period.

Sec. 13. NAC 697.240 Discipline for act of one partner. (NRS 679B.130) The license of each member of a partnership is subject to suspension or revocation for the failure of the partnership or of any member of the partnership to comply with all laws and regulations governing the conduct of the bail business or acts incidental thereto, if the failure occurred with the *member's* knowledge, consent, ratification, [~~or~~] collusion [~~of the member~~] *or deliberate failure to make a reasonable inquiry.*

DUTIES OF LICENSEES

Sec. 14. NAC 697.250 Bail Solicitors. (NRS 679B.130; NRS 697.060)

1. In addition to fulfilling the requirements of chapter 697 of NRS, a *bail* solicitor must:

- (a) Pass a special solicitor's examination provided by the Commissioner; and
- (b) Meet other qualifications established by the Commissioner.

2. A ~~[person who is licensed as a]~~ *bail* solicitor *employed by a licensed* ~~[may perform the duties of]~~ bail agent ~~[, except that a solicitor may not execute a bond]~~ *must be registered as an employee of the bail agent*

~~[3.—All persons licensed as solicitors before November 22, 1978, are deemed to have complied]~~ with the ~~[terms]~~ *Division before he or she may solicit business on behalf of [this chapter] the bail agent.*

Sec. 15. NAC 697.310 Actions for attorneys; release or assignment of collateral. (NRS 679B.130)

1. No licensee, or employee *or agent* thereof, may receive, accept or otherwise collect or transmit money or other consideration for attorney's fees, services or costs, or for any other purpose, to an attorney on behalf of any defendant.

2. ~~[A licensee who is lawfully holding money or other collateral may, upon release or assignment of the collateral, honor the release or assignment if the licensee took no part in the negotiation of the release or assignment.]~~ *A licensee may not require or prohibit the use of a particular attorney by a defendant for the defendant's criminal case.*

3. Any release or assignment of collateral held by a ~~[licensee]~~ *bail agent*, including a release or assignment to pay a *court-imposed* fine or for any reason other than to satisfy or secure the bond for which the collateral was originally received, must be executed ~~[by the defendant]~~ in writing *by the person who pledged the collateral, upon a court's discharge of the obligation, the satisfaction of which was secured by the collateral.*

Sec. 16. NAC 697.330 Information concerning employees. (NRS 679B.130, 697.130, 697.360) Each ~~[bail bond agent]~~ *licensee* shall furnish *annually* ~~[the following]~~ information concerning every person ~~[in his]~~ *employed* or ~~[her employ]~~ *contracted by the licensee*, including *unlicensed individuals*, independent contractors, clerical workers, skip tracers and ~~[special]~~ *bail enforcement agents on a form provided by the Commissioner through the Division's website, www.doi.nv.gov.* ~~[for the purpose of surrender, as long as the persons are employed for an aggregate period of 30 days or more during any 1-year period:~~

- ~~—1.—Name;~~
 - ~~—2.—Address, length of time at that address, and previous addresses for 2 years preceding the date of application;~~
 - ~~—3.—Business and residence telephone numbers;~~
 - ~~—4.—Age, date of birth, place of birth and social security number; and~~
 - ~~—5.—Current and previous occupations for 2 years preceding the date of the application.~~
- ~~→The requirements of this section may be met by completing Form ID6-BE, Bail Employee Notification Form, which will be provided by the Commissioner. The provisions of this section apply only to those persons employed within the State of Nevada.]~~

Sec. 17. NAC 697.340 Supervision of employees. (NRS 679B.130) ~~[An employing]~~ *A* bail agent shall exercise supervision over his or her employees and make a diligent effort to keep informed of their acts as his or her employees. Failure of the employer to exercise sufficient supervision to prevent violations of the *I* ~~[i]~~nsurance ~~[law]~~ *Code* or this chapter by the employee

while acting within the scope of his or her employment may result in disciplinary action against the ~~[employer]~~ *employing bail agent or bail agency*.

Sec. 18. NAC 697.350 Advertising and listings ~~[in classified section of telephone directories]~~. ([NRS 679B.130](#))

All advertising, ~~[or]~~ *including* telephone listings in ~~[the classified sections of]~~ telephone directories, *websites, and any other means used to solicit business*, must clearly indicate the true name of each licensee who owns the business, along with ~~[its fictitious name]~~ *the license number of the person advertising or listing*.

Sec. 19. NAC 697.355 Advertisement or solicitation of bail transaction; dissemination of untrue, deceptive or misleading information prohibited. ([NRS 679B.130](#))

1. Except as otherwise provided in subsection 2 *and NAC 697.350*, a person shall not advertise or solicit a bail transaction, directly or indirectly, including, without limitation, by the use of any type of printed ~~[matter]~~ *or electronic media*, a bail solicitor or an employee of a court, prison, county or city jail or detention facility:

- (a) Within the prison, county or city jail or detention facility;
- (b) Within a courthouse or courtroom; or
- (c) On the property upon which the prison, county or city jail, detention facility or courthouse is located.

2. The provisions of subsection 1 do not prohibit ~~[-]~~ ~~(a) A]~~ *an* employee of the court, prison, county or city jail or detention facility from distributing or posting a list prepared by:

- ~~(1]~~ *a*) The Division of Insurance of the Department of Business and Industry; or
- ~~(2]~~ *b*) The court, prison, county or city jail or detention facility,

~~[→ that sets forth the names and telephone numbers of bail agents who are licensed pursuant to chapter 697 of NRS.~~

~~(b) A person from advertising in or distributing a telephone directory prepared for and distributed to the general public]~~ that sets forth the names and telephone numbers of bail agents who are licensed pursuant to [chapter 697](#) of NRS.

3. A person shall not make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, television station, electronic media, or in any other way, any advertisement, announcement or statement containing any assertion, representation or statement with respect to the transaction of bail or with respect to any person in the conduct of his or her bail surety business, which is untrue, deceptive or misleading.

SURETY COMPANIES

Sec. 20. NAC 697.360 Maintenance of accounts. ([NRS 679B.130](#)) Deposits, reserves or build-up accounts posted by a bail ~~[bondsman or general]~~ agent, either with a surety ~~[company]~~ or a general agent representing a surety company, must be maintained by the surety ~~[company]~~ or the general agent as trustee for the *bail* agent and deposited in a bank, savings and loan association, thrift company or similar institution in Nevada.

Sec. 21. NAC 697.370 Provision of envelopes to clerk of court. ([NRS 679B.130](#)) Each surety [company] engaged in the writing of bail bonds shall provide to the clerk of each court in which the surety [company] posts bonds, self-addressed envelopes for the use of the court in notifying the surety [company] that final judgment of default has been entered against a bond of the [company] surety.

Sec. 22. NAC 697.380 Satisfaction of final judgment of default. ([NRS 679B.130](#))

~~[1. For purposes of [NAC 697.370](#) and this section, “final judgment of default” means a judgment entered against a bond after the 180-day notice of forfeiture period as provided in [NRS 178.508](#).~~

~~2] If the final judgment of default has not been satisfied within 30 days after the clerk serves it [by mail] to the *bail agent or* surety [company], the Commissioner may ~~[require an officer of]~~ *take administrative action for the failure to timely comply with* the ~~[company to appear before him or her]~~ *final judgment of default.*~~

Sec. 23. NAC 697.410 Required information~~[: **authorized form**].~~ ([NRS 679B.130](#), [679B.137](#))

1. Each ~~[bail bondsman licensed under the provisions of [chapter 697](#) of NRS]~~ *licensee* shall maintain complete, *legible*, and accurate records.

2. The records of a bail agent must contain ~~[of]~~ the following information for each ~~[bond]~~ *bail transaction*:

(a) The date on which the bond was executed.

(b) The bond number.

(c) The names of ~~[all principals on whose behalf]~~ *each defendant and indemnitor in* the ~~[bond was issued]~~ *bail transaction.*

(d) The amount of the bond.

(e) The court in which the bond was posted.

(f) Any expenses or fees charged, with receipts or verifiable proof of the expense incurred.

(g) Corresponding collateral receipts.

(h) Notice of forfeiture and effective date.

(i) Notice of exoneration and date, or final judgment of default.

(j) Any forms signed by the defendant or indemnitor.

~~[2. The requirements of this section may be met by completing a form similar to the Division of Insurance Form M-8A.]~~

3. The bail agent shall keep a copy of each document, including a copy of the bond and face sheet, filed with the court.

Sec. 24. NAC 697.420 Location of records; quarterly reports. ([NRS 679B.130](#))

1. Information required by [NAC 697.410](#) must be compiled by the ~~[licensee]~~ *bail agent* and filed at the home office of the surety [company] unless the [company] *surety* designates another location in writing to the Commissioner and that location is approved by the Commissioner.

2. The information required by this section must be updated on a quarterly basis and filed at the designated place of filing not later than 21 days after the close of each calendar quarter.

Sec. 25. NAC 697.430 Retention by surety [~~company~~]. ([NRS 679B.130](#)) All forms forwarded to the surety [~~company~~] pursuant to this chapter must be maintained for 3 years after the date of receipt by the surety [~~company~~].

Sec. 26. NAC 697.440 Filing of [~~sample copies of~~] forms. ([NRS 679B.130](#)) Each licensee shall file [~~with~~] *for the approval of* the Commissioner [~~a sample copy of~~] each form *intended to be* used in his or her business. *In any transaction related to bail, a licensee may only use forms which have been previously expressly approved by the Commissioner.*

Sec. 27. NAC 697.450 Copies required. ([NRS 679B.130](#)) Every [~~bondsman's~~] *bail* agent or employee of [~~an~~] *a bail agent or bail agency* shall promptly provide [~~, upon request~~] to [~~any person who posts or secures bail~~] *a defendant* or [~~otherwise becomes obligated~~] *indemnitor complete* copies of any form signed by that person.

Sec. 28. NAC 697.460 Receipts for collateral. ([NRS 679B.130](#))

1. Receipts for collateral [~~must be issued~~] *providing detailed description of property must be issued at the time collateral is offered and accepted by a bail agent* and maintained in numerical order. A master collateral receipt book must remain permanently at the principal place of business of the [~~licensee~~] *bail agent*.

2. A [~~licensee~~] *bail agent* may keep a duplicate book of collateral receipts on his or her person away from the principal place of business. If a duplicate book is maintained, it must be clearly designated as such.

AGREEMENTS

Sec. 29. NAC 697.470 Agreement to act as [~~guarantor~~] indemnitor. ([NRS 679B.130](#))

1. All *bail* agreements [~~of persons to act as guarantor~~] must be in writing or reduced to writing as soon as possible after consummation, *in a form previously approved by the Commissioner as provided in NAC 697.440*. If any person acts as [~~a guarantor~~] *an indemnitor*, a copy of the agreement executed by the person must be delivered to him or her promptly upon his or her completion of the execution. [~~No~~] *Any collateral offered by a defendant or indemnitor and accepted by a* [~~licensee~~] *agent must be specifically itemized, described and authenticated by signature of the person pledging the collateral at the time the bail agreement is executed. A bail agent may not* enforce [~~any such~~] *a bail* agreement without disclosing to the [~~guarantor~~] *defendant or indemnitor* all collateral held by the [~~licensee~~] *bail agent* indemnifying the bond. *The bail agent must disclose* to [~~which~~] the [~~agreement relates, and~~] *indemnitor* the identity of [~~all~~] *any* other [~~guarantors thereof~~] *indemnitors to the same bond*, if any.

Sec. 30. NAC 697.475 Certain agreements prohibited. ([NRS 679B.130](#)) It is unlawful for any licensee to:

1. *Enter into any agreement of any kind which would be in violation or in conflict with any of the provisions in the Insurance Code or any other applicable law.*

2. Enter into any agreement of any kind which would directly or indirectly result in a restraint of trade or an unfair method of competition; or

~~2/~~ 3. Have any direct or indirect understanding with any law enforcement agency, judicial officer, employee of any court, newspaper employee, private investigator, messenger service or

similar business, trusty in a jail or anyone incarcerated, under which the person will notify or inform the licensee, directly or indirectly, of a criminal complaint, an arrest, that an arrest is pending or contemplated, or any other matters relating thereto.

4. Add or amend terms of any bail agreement or form in a bail transaction unless all parties to the bail agreement agree to such changes in writing.

5. Threaten to surrender a defendant to influence a person's decision to agree to add or amend a bail agreement or form.

Sec. 31. NAC 697.480 Guarantee of bail in advance of offense prohibited. (NRS 679B.130) No bail [~~licensee~~] *agent* may enter into an agreement or arrangement with any person, guaranteeing or assuring in advance of the commission of any offense that bail will be furnished to the person if he or she is arrested.

COLLATERAL

Sec. 32. NAC 697.520 Disbursement. (NRS 679B.130)

[~~1. Upon return of~~] [~~e~~] Collateral *shall be returned* to the person who posted it [~~, if any amount has been deducted~~] *as soon as the obligation secured* by the [~~licensee as expense, the licensee shall include with the money an itemized statement of all expenses, and maintain a copy of the statement in his or her file. The statement must include notary fees, guard fees and any other expenses deducted from the collateral.~~

—~~2.~~] *collateral is discharged*. If the bond secured by the collateral is forfeited and [~~the licensee retains~~] *a final judgment of default is entered by the court against the bond and the bail agent seeks to retain* possession of the collateral in payment of the forfeiture or otherwise dispose[~~s~~] of the collateral, the [~~licensee~~] *bail agent* shall

(1) advise the surety [~~company~~] within 7 working days of the [~~terms of the disposition~~] *intent to transfer or dispose of the collateral; and*

(2) *Follow lawful means to transfer or dispose* of the collateral.

[~~3.—Compliance with subsection 1 or 2 of this section may be accomplished by completion of a form similar to Form M-8B or M-8B-1, and including the items shown on those forms.~~]

Sec. 33. NAC 697.530 Real property. (NRS 679B.130)

1. *A bail agent shall comply with all laws related to transfer and holding real property in secured transactions.*

2. [~~If a licensee~~] *If a bail agent* receives any document which conveys title to real property as collateral in a bail transaction, whether on his or her own behalf or on behalf of a surety [~~company~~], the document must state on its face that it is executed as part of a security transaction.

[~~2~~] 3. If the document is recorded, a reconveyance of the property executed in such a manner that it may be recorded must be delivered by the [~~licensee~~] *bail agent* or surety to the person executing the original conveyance, or to his or her heirs, legal representative or successor in interest, promptly upon satisfaction of the obligation secured.

[~~3~~] 4. The [~~licensee~~] *bail agent* or surety [~~company~~] shall determine promptly whether the obligation has been discharged upon request for return of the collateral by the person entitled to it.

MISCELLANEOUS PROVISIONS

Sec. 34. NAC 697.550 Early surrender of defendant. (NRS 679B.130; NRS 697.330)

1. No *surety* or bail [~~bondsman~~] *agent* may *cause the* surrender *of* a defendant back into custody without good cause before the time specified in the bond for the appearance of the defendant.

2. “Good cause” includes [~~but is not limited to~~]:

(a) Information from a [~~source~~] credible [~~under the circumstances~~] *source* that the defendant intends to fail to appear before the appropriate court at the date and time prescribed.

(b) Materially false information [~~on~~] *provided by* the [~~application of a~~] defendant *in writing intended to mislead the bail agent or surety which materially affects the underwriting assessment.*

(c) An increase by the court in the amount of bail beyond [~~sound~~] *reasonable* underwriting criteria employed by the [~~licensee~~] *bail agent.*

(d) [~~A material change in the collateral posted by the defendant or one acting on his or her behalf.~~]

[~~e~~] A change of address or telephone number by the defendant made without giving reasonable notice to the [~~licensee~~] *bail agent or an employee of the bail agency.*

([~~f~~] *e*) Commission of another crime, other than a minor *infraction, such as a* traffic violation, by the defendant while on bail, *if such crime reasonably changes the underwriting assessment.*

([~~g~~] *f*) Failure by the defendant to appear in court at the appointed time *if the defendant’s failure to appear was unjustifiable or unreasonable.*

([~~h~~] *g*) A [~~finding~~] *violation* of [~~guilt against the defendant~~] *a term or condition of bail set* by [~~a~~] *the* court [~~of competent jurisdiction~~].

3. If a *surety or* bail [~~bond~~] *agent* [~~surrenders~~] *causes the surrender of* a defendant before the time specified in the bond, the *surety or bail* agent shall, within 10 days after the surrender, [~~complete and mail to~~] *file with* the Commissioner a *verified* statement concerning the surrender, including the information required on *the Early Surrender Verification* Form [~~M&C~~] available from the [~~Commissioner of Insurance~~] *Division’s website www.doi.nv.gov. The form submitted must include a copy of the surety’s or bail agent’s authorization to early surrender the defendant, as well as any documents submitted to the court or jail related to the early surrender. Failure to submit the form and supporting documents within 10 days after the surrender deems the surrender to be without good cause, and the bail agent shall refund the premium.*

4. *If a bail agent causes a defendant to be surrendered pursuant to this section, then re-posts a bond on the defendant for the same case, the bail agent may not collect premium again.*