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House BILL NO. 336

INTRODUCED BY Barnett

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PERSONS WHO EXECUTE ONLY SURETY BAIL BONDS FROM CONTINUING EDUCATION REQUIREMENTS; CHANGING THE REQUIRED DURATION OF BAIL BONDS; CHANGING THE PERIOD OF TIME AND THE CONDITIONS UNDER WHICH BAIL BONDS MUST BE EXONERATED; ESTABLISHING A 1-YEAR RENEWABLE DURATION FOR SURETY BAIL BONDS; AMENDING SECTIONS 33-17-1203, 46-9-401, AND 46-9-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-17-1203, MCA, is amended to read:

"**33-17-1203. Continuing education -- basic requirements -- exceptions.** (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance ~~shall~~ is required, during each calendar year, to complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life, disability, or credit life and disability insurance or as a consultant for life insurance ~~shall~~ is required, during each calendar year, to complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses ~~shall~~ is required, during each calendar year, to complete at least 15 credit hours of approved continuing education;

(d) a person licensed as an insurance producer or consultant ~~shall~~ is required, during each biennium, to complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1

1 year, during which the requirements imposed by subsection (1) may be completed.

2 (4) The minimum continuing education requirements do not apply to:

3 (a) a person licensed to sell any kind of insurance for which an examination is not required under
4 33-17-212(7)(d) through (7)(g);

5 (b) a person holding a temporary license issued under 33-17-216;

6 (c) a nonresident licensee who must meet continuing education requirements in the licensee's state
7 of residence if that state accords substantially similar privileges to and has similar requirements of residents
8 of this state;

9 (d) a newly licensed insurance producer or consultant during the calendar year in which the
10 licensee first received a license;

11 (e) an insurance producer or consultant otherwise exempted by the commissioner; ~~or~~

12 (f) a person selling only credit life and disability insurance incidental to other noninsurance
13 activities; or

14 (g) a person who executes only surety bail bonds."

15

16 **Section 2.** Section 46-9-401, MCA, is amended to read:

17 "**46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

18 (a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds,
19 certificates of deposit, or other personal property approved by the court;

20 (b) by pledging real estate situated within the state with an unencumbered equity, not exempt,
21 owned by the defendant or sureties at a value double the amount of the required bail;

22 (c) by posting a written undertaking executed by the defendant and by two sufficient sureties; or

23 (d) by posting a commercial surety bond executed by the defendant and by a qualified agent for
24 and on behalf of the surety company.

25 (2) The amount of the bond must ensure the appearance of the defendant ~~at all times required~~
26 ~~through all stages of the proceeding including trial de novo, if any, and, unless the bond is denied by the~~
27 ~~court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court~~ the
28 defendant is convicted.

29 (3) Nothing in this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-510
30 in a case in which the surety feels insecure in accepting liability for the defendant."

1 **Section 3.** Section 46-9-503, MCA, is amended to read:

2 "**46-9-503. Violation of release condition -- forfeiture.** (1) If a defendant violates a condition of
3 release, including failure to appear, the prosecutor may make a written motion to the court for revocation
4 of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating
5 a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with
6 46-7-101.

7 (2) If a defendant fails to appear before a court as required and bail has been posted, the judge may
8 declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the
9 defendant's sureties at their last-known address within 10 working days or the bond becomes void and
10 must be released and returned to the surety within 5 working days.

11 (3) If at any time within ~~30~~ 90 days after the forfeiture the defendant's sureties appear and
12 satisfactorily excuse the defendant's failure to appear, the judge may direct the forfeiture to be discharged
13 upon terms as may be just. If at any time within 90 days after the forfeiture the defendant appears and
14 satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged
15 upon terms as may be just.

16 (4) The surety bail bond must be exonerated upon proof of the defendant's death, incarceration,
17 or subsection to court-ordered treatment in a foreign jurisdiction that inhibits the retrieval of the defendant
18 by the surety.

19 (5) The surety bail bond is in force for 1 year from the time of its issuance and may be renewed
20 annually at the surety's discretion."

21
22 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

23 -END-

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 336

INTRODUCED BY BARNETT

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PERSONS WHO EXECUTE ONLY SURETY BAIL BONDS FROM CONTINUING EDUCATION REQUIREMENTS; CHANGING THE REQUIRED DURATION OF BAIL BONDS; CHANGING THE PERIOD OF TIME AND THE CONDITIONS UNDER WHICH BAIL BONDS MUST BE EXONERATED; ~~ESTABLISHING A 1 YEAR RENEWABLE DURATION FOR SURETY BAIL BONDS;~~ AMENDING SECTIONS 33-17-1203, 46-9-401, AND 46-9-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(b) a person licensed to act as an insurance producer for life, disability, or credit life and disability insurance or as a consultant for life insurance ~~shall~~ is required, during each calendar year, to complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses ~~shall~~ is required, during each calendar year, to complete at least 15 credit hours of approved continuing education;

(d) a person licensed as an insurance producer or consultant ~~shall~~ is required, during each biennium, to complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1

1 year, during which the requirements imposed by subsection (1) may be completed.

2 (4) The minimum continuing education requirements do not apply to:

3 (a) a person licensed to sell any kind of insurance for which an examination is not required under
4 33-17-212(7)(d) through (7)(g);

5 (b) a person holding a temporary license issued under 33-17-216;

6 (c) a nonresident licensee who must meet continuing education requirements in the licensee's state
7 of residence if that state accords substantially similar privileges to and has similar requirements of residents
8 of this state;

9 (d) a newly licensed insurance producer or consultant during the calendar year in which the
10 licensee first received a license;

11 (e) an insurance producer or consultant otherwise exempted by the commissioner; ~~or~~

12 (f) a person selling only credit life and disability insurance incidental to other noninsurance
13 activities; or

14 (g) a person who executes only surety bail bonds."

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16 **Section 2.** Section 46-9-401, MCA, is amended to read:

17 "**46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

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19 certificates of deposit, or other personal property approved by the court;

20 (b) by pledging real estate situated within the state with an unencumbered equity, not exempt,
21 owned by the defendant or sureties at a value double the amount of the required bail;

22 (c) by posting a written undertaking executed by the defendant and by two sufficient sureties; or

23 (d) by posting a commercial surety bond executed by the defendant and by a qualified agent for
24 and on behalf of the surety company.

25 (2) The amount of the bond must ensure the appearance of the defendant ~~at all times required~~
26 ~~through all stages of the proceeding including trial de novo, if any, and, unless the bond is denied by the~~
27 ~~court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court the~~
28 defendant is convicted PLEADS GUILTY OR IS FOUND GUILTY BY A LEGALLY CONSTITUTED JURY OR
29 BY A COURT OF COMPETENT JURISDICTION AUTHORIZED TO TRY THE CASE.

30 (3) Nothing in this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-510

1 in a case in which the surety feels insecure in accepting liability for the defendant."
 2

3 **Section 3.** Section 46-9-503, MCA, is amended to read:

4 **"46-9-503. Violation of release condition -- forfeiture.** (1) If a defendant violates a condition of
 5 release, including failure to appear, the prosecutor may make a written motion to the court for revocation
 6 of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating
 7 a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with
 8 46-7-101.

9 (2) If a defendant fails to appear before a court as required and bail has been posted, the judge may
 10 declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the
 11 defendant's sureties at their last-known address within 10 working days or the bond becomes void and
 12 must be released and returned to the surety within 5 working days.

13 (3) If at any time within ~~30~~ 90 days after the forfeiture the defendant's sureties appear and
 14 satisfactorily excuse the defendant's failure to appear OR PRODUCE THE DEFENDANT, the judge ~~may~~
 15 SHALL direct the forfeiture to be discharged ~~upon terms as may be just~~ AND RETURN THE SURETY BOND
 16 TO THE SURETIES WITH NO MONETARY PENALTY. If at any time within 90 days after the forfeiture the
 17 defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the
 18 forfeiture to be discharged ~~upon terms as may be just~~ AND RETURN THE SURETY BOND TO THE SURETY
 19 WITH NO MONETARY PENALTY.

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 21 or subjection to court-ordered treatment in a foreign jurisdiction that inhibits the retrieval of the defendant
 22 by the surety.

23 ~~(5) The surety bail bond is in force for 1 year from the time of its issuance and may be renewed~~
 24 ~~annually at the surety's discretion.~~

26 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

27 -END-

1 HOUSE BILL NO. 336

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PERSONS WHO EXECUTE ONLY SURETY BAIL
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15 subsection (4):

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17 insurance or as a consultant for general insurance ~~shall~~ is required, during each calendar year, to complete
18 at least 10 credit hours of approved continuing education;

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22 (c) a person holding multiple licenses ~~shall~~ is required, during each calendar year, to complete at
23 least 15 credit hours of approved continuing education;

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29 hours may be carried forward and applied to the continuing education requirements of the next year.

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16 **Section 2.** Section 46-9-401, MCA, is amended to read:

17 **"46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

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 24 ~~annually at the surety's discretion."~~

25
 26 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

27 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 336 (third reading copy -- blue), respectfully report that HB 336 be amended as follows and as so amended be concurred in.


Signed: 
Senator Bruce Crispin, Chair

That such amendments read:

1. Title, lines 5 and 6.
Following: "REQUIREMENTS;" on line 5
Strike: remainder of line 5 through "BONDS;" on line 6
2. Title, line 8.
Strike: "46-9-401,"
3. Page 2, line 16 through page 3, line 1.
Strike: section 2 in its entirety
Renumber: subsequent sections

-END-

HB 336


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE

1 HOUSE BILL NO. 336

2 INTRODUCED BY BARNETT

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PERSONS WHO EXECUTE ONLY SURETY BAIL
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 6 ~~BAIL BONDS~~; CHANGING THE PERIOD OF TIME AND THE CONDITIONS UNDER WHICH BAIL BONDS
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7 a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with
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23 ~~(5) The surety bail bond is in force for 1 year from the time of its issuance and may be renewed~~
24 ~~annually at the surety's discretion."~~

25
26 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

27 -END-

OFFICE OF THE GOVERNOR

STATE OF MONTANA

MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

April 15, 1995

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Bob Brown
President of the Senate
State Capitol
Helena MT 59620

Dear Speaker Mercer and President Brown:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto House Bill 336, "AN ACT EXEMPTING PERSONS WHO EXECUTE ONLY SURETY BAIL BONDS FROM CONTINUING EDUCATION REQUIREMENTS; CHANGING THE PERIOD OF TIME AND THE CONDITIONS UNDER WHICH BAIL BONDS MUST BE EXONERATED; AMENDING SECTIONS 33-17-1203, AND 46-9-503, mca; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE" for the following reasons.

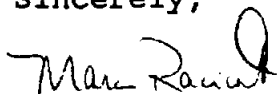
House Bill 336 addresses the continuing educational requirements of persons who execute surety bail bonds as well as the conditions under which bail bonds are exonerated. While I have no objections to exempting bail bond persons (sureties) from continuing education requirements, I do have concerns with the bill's second section, which deals with the forfeiture of bail upon failure of a criminal defendant to appear before a court.

If a criminal defendant who is out on bail fails to appear in court, section 2 of House Bill 336 gives the defendant's surety 90 days to produce the defendant or appear and satisfactorily excuse the defendant's failure to appear. If this is done, the judge must discharge the forfeiture of the bond with no monetary penalty to the surety, in spite of the fact that the state or county may have undertaken expenses in calling a jury, searching for the defendant, etc.

The whole purpose of executing a bail bond is to secure the release of a defendant with the assurance that the defendant will appear in

court. If the defendant does not show up the bond is forfeited. If a grace period is granted during which a surety may find the defendant and excuse his or her non-appearance, then at the very least the bond that is returned to the surety should be able, in the discretion of the court, to be off-set by those costs that would not have been incurred by the state or county had the defendant appeared in the first place. One questions the need for a bail bond at all if the taxpayer ends up paying the very costs the bond was meant to cover.

Sincerely,

A handwritten signature in cursive script that reads "Marc Racicot". The signature is written in dark ink and is positioned to the right of the typed name.

MARC RACICOT
Governor