



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2016 Sunset Review:
Cash-Bonding and Professional Cash-Bail
Agents**

October 14, 2016





COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2016

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:

This year, Colorado's sunset review process celebrates its 40th anniversary with the publication of the 2016 sunset reports. The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- 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.

Accordingly, COPRRR has completed the evaluation of the cash-bonding and professional cash-bail agent's statute. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2015 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 23 of Title 10, C.R.S. The report also discusses the effectiveness of the Commissioner of Insurance and Division of Insurance 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,

Joe Neguse
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunset Review Cash-Bonding and Professional Cash-Bail Agents

SUMMARY

What Is Regulated?

The statute provides regulatory oversight of cash-bonding and professional cash-bail agents (collectively referred to as “bail bonding agents”).

Why Is It Regulated?

Regulating bail bonding agents serves two important functions. First, it ensures that bail bonding agents have fulfilled the minimum statutory requirements to practice in Colorado, including posting a \$50,000 cash qualification bond with the Division of Insurance (Division). The purpose of the cash qualification bond is to pay the court the amount of bail established in order to be released from custody if a defendant fails to attend his or her court proceedings. Regulating bail bonding agents also provides protection to consumers by limiting the fees bail bonding agents can charge. In fact, the statute prohibits bail bonding agents from charging fees of more than 15 percent (a minimum of \$50) of the amount of bail furnished.

Who Is Regulated?

In fiscal year 14-15, there were 3 registered cash-bonding agents and 27 registered professional cash-bail agents.

How Is It Regulated?

The statute is enforced by the Commissioner of Insurance (Commissioner). The Commissioner is responsible for, among other things, imposing discipline, including fines, on registrants.

What Does It Cost?

In fiscal year 14-15, the total expenditures for the oversight of bail bonding agents were \$31,586. There were 0.25 full-time equivalent employees associated with this regulatory oversight.

What Disciplinary Activity Is There?

In fiscal year 14-15, there were three disciplinary actions (including one fine) against bail bonding agents. Generally, bail bonding agents are disciplined for failing to comply with the current requirement to post a \$50,000 cash qualification bond with the Division or failing to use the cash qualification bond for a forfeiture of bail.

KEY RECOMMENDATIONS

Continue the regulation of cash-bonding and professional cash-bail agents for nine years, until 2026.

The regulation of bail bonding agents by the Commissioner provides protection to consumers through, among other things, imposing discipline on bail bonding agents for violations of the statute and financial protection to the courts by requiring bail bonding agents to pay the amount of bail established by the court if a defendant fails to appear for his or her court proceedings. Bail bonding agents provide an important service for defendants, and in order to continue to provide these services with regulatory safeguards to protect consumers from harm, the General Assembly should continue the regulation of bail bonding agents for nine years, until 2026.

Authorize the Commissioner to release a deed of trust if the bail bonding agent refuses or is unable to release the lien.

Oftentimes, when a defendant is arrested and bail is set by the court, the defendant does not have the funds to satisfy the bail requirements. A defendant may contact a bail bonding agent to post a bond with the court to satisfy the bail requirement. If the defendant cannot pay the bail bonding agent the fee for posting the bond to the court, he or she sometimes chooses to use property as collateral, such as a home. If a defendant uses real property as collateral, the bail bonding agent instructs the defendant and the property owner, if it is someone other than the defendant, to sign a “deed of trust,” which is essentially a lien against the property used in satisfying the bail amount to be paid to the bail bonding agent.

After the bond is released by the court and after all of the fees are paid to the bail bonding agent, the bail bonding agent will contact the county where the deed of trust was filed to release the lien on the property. However, if a bail bonding agent refuses or is unable to release the lien, the deed of trust remains on the property. This is problematic for consumers when all of the court proceedings are complete. In order to ensure that consumers have a deed of trust released on their property if unforeseen circumstances occur with the bail bonding agent, the General Assembly should grant the Commissioner the authority to release the deed of trust.

METHODOLOGY

As part of this review, staff in the Colorado Office of Policy, Research and Regulatory Reform interviewed Division staff, reviewed Division records, interviewed officials with state and national professional associations, interviewed stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

American Bail Coalition
Colorado Attorney General’s Office
Colorado Bar Association
Colorado Judicial Branch

Division of Insurance
Office of the Colorado State Public Defender
Pearson Vue
Professional Bail Agents of Colorado

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public’s right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
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Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- 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;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Commissioner of Insurance and Division of Insurance, (Commissioner and Division, respectively) as enumerated in Article 23 of Title 10, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2017, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the administration of this program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of cash-bonding and professional cash-bail agents should be continued and to evaluate the performance of the Commissioner and Division staff. During this review, the Commissioner and Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, reviewed Division records, interviewed officials with state and national professional associations, interviewed stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Industry

The Eighth Amendment to the U. S. Constitution ensures, among other things, excessive bail shall not be required for those accused of criminal activity. The Colorado Constitution affords persons accused of a crime a right to bail, except for capital offenses when proof is evident or presumption is great or when the court finds the public would be in danger if the accused were released.²

Bail is the amount of money, property or bond that a defendant must pledge to the court as security for his or her appearance at future court proceedings.³ If the defendant meets bail or is able to pay the amount set by the court, he or she is entitled to recover the bail amount at the conclusion of criminal proceedings.⁴ Bail is determined by the court using several factors, including:⁵

- The seriousness of the offense;
- The weight of evidence against the defendant;
- The nature and extent of any ties, such as family or employment, that the accused has to the community where he or she will be prosecuted;
- The defendant's ability to pay the given amount; and
- The likelihood the accused will flee the jurisdiction if released from custody.

Setting bail unreasonably high could unnecessarily restrict a defendant's freedom when the defendant has only been accused of a crime, and it could prevent the accused from being able to pursue a living, including supporting his or her family.⁶

If, however, the defendant fails to appear in court as scheduled during prosecution, the defendant forfeits the bail amount and still faces criminal penalties if convicted of the offence(s) charged.⁷

There are three types of bail bonding professionals: cash-bonding, professional cash-bail and surety agents. Cash-bonding and professional cash-bail agents are the focus of this sunset review. Cash-bonding agents are authorized to write an unlimited amount of bail for an unlimited number of defendants. The Division no longer issues new registrations for cash-bonding agents. There are only three registered cash-bonding agents registered in Colorado, and this type of registration will be eliminated through attrition.

² Article II § 19(1), Colorado Constitution

³ West's Encyclopedia of American Law, Edition 2 (2008).

⁴ West's Encyclopedia of American Law, Edition 2 (2008).

⁵ West's Encyclopedia of American Law, Edition 2 (2008).

⁶ West's Encyclopedia of American Law, Edition 2 (2008).

⁷ West's Encyclopedia of American Law, Edition 2 (2008).

Cash-bonding agents are required to post a minimum of \$50,000 cash qualification bond with the Division. The Division must be designated as an authorized signatory with right of survivorship on financial instruments such as, a bank account, certificate of deposit, or security that funds the cash qualification bond.⁸ The purpose of the cash qualification bond is to pay the court the amount of bail established in order to be released from custody if a defendant fails to attend his or her court proceedings.

Professional cash-bail agents are authorized to write bail for not more than twice the amount of the qualification bond filed with the Division. The minimum amount of the qualification bond is also \$50,000.⁹ So, a professional cash-bail agent who has a \$50,000 qualification bond filed with the Division can only write a bond to a court if the bail is \$100,000 or less. However, professional-cash bail agents can write bail for an unlimited number of defendants.

In this report, when referring to both cash-bonding and professional cash-bail agents they will be collectively referred to as “bail bonding agents.”

Surety bail agents contract with insurance companies to provide bail services, and they are included in the 2016 Division of Insurance sunset review. Hence, they are not discussed in this report.

If a person is taken into police custody (arrested), he or she is “booked” or “processed” into jail. During booking, officers will:¹⁰

- Record personal information (including name, date of birth and physical characteristics);
- Record information about the alleged crime committed;
- Record the defendant’s fingerprints and photograph;
- Check the criminal background of the defendant;
- Search the person and confiscate any personal property (e.g., keys and cell phones); and
- Place the person in a police station holding cell or local jail.

In cases where the court determines that bail is required to ensure that the accused appears in court for all of his or her criminal proceedings, the court will have a bail hearing.¹¹ This is where the bail amount is established by the court.

Once the bail amount is established, the accused may choose to pay the entire bail amount. For example, if the amount of bail is \$1,000, the accused can pay the entire amount, plus any applicable fees, to be released from custody.

⁸ §§ 10-23-105(1) and (3), C.R.S.

⁹ § 10-23-105(2), C.R.S.

¹⁰ Find Law. *Bail and Bonds*. Retrieved June 14, 2016, from <http://criminal.findlaw.com/criminal-legal-help/bail-bonds.html>

¹¹ Find Law. *Bail and Bonds*. Retrieved June 14, 2016, from <http://criminal.findlaw.com/criminal-legal-help/bail-bonds.html>

The accused, however, will oftentimes utilize a bail bonding agent to pay and ensure bond to the court. That is, the bail bonding agent agrees to pay the amount of the bond to the court if the defendant fails to appear at court proceedings.¹²

Bail bonding agents are authorized to charge a premium or commission of up to 15 percent of the amount of bail furnished to the court, with a minimum of \$50. For example, a defendant who has his or her bail amount established by a court for \$10,000, enables the bail bonding agent to charge a premium or commission to the defendant of up to \$1,500.

As Table 1 illustrates, the amount of bail written by bail bonding agents has decreased in the past five years. However, as the numbers suggest, bail bonding agents still write a relatively large, in real dollars, amount of bail in Colorado.

Table 1
Total Amount of Bail Written by Bail Bonding Agents in the Past Five Calendar Years

Calendar Year	Total Amount of Bail Written
2011	\$100,315,792
2012	\$101,273,880
2013	\$92,587,244
2014	\$62,389,425
2015	\$61,469,757

¹² Find Law. *Bail and Bonds*. Retrieved June 14, 2016, from <http://criminal.findlaw.com/criminal-legal-help/bail-bonds.html>

Legal Framework

History of Regulation

The bail industry has been regulated in Colorado since 1963. The initial law creating the regulation of bail bonding agents required any person who furnished bail in five or more criminal cases in counties with a population of more than 50,000 to be licensed.

Since the inception of regulatory oversight of bail bonding agents, there have been many changes implemented. The Department of Regulatory Agencies' (DORA) sunset reviews of the bail industry have facilitated many of the changes. DORA has conducted numerous sunset reviews, including reviews in 1992, 1995, 2003 and 2011. Examples of recommendations in DORA's sunset reviews of bail bonding agents are highlighted below:

- The 1992 sunset review recommended that the Division of Insurance (Division) within DORA would have priority over bail bonding agents' cash qualification bonds. This recommendation was enacted by the General Assembly.
- The 2003 sunset review included a recommendation to require bail bonding agents to submit rate filings (the amount bail bonding agents charge consumers) annually with the Division. This recommendation was also enacted by the General Assembly.

Legal Summary

The regulation of cash-bonding agents and professional cash-bail agents, collectively referred to as bail bonding agents, is created in section 10-23-101, *et seq.*, Colorado Revised Statutes.

Cash-bail agents are authorized to write an unlimited number of bonds and an unlimited amount of bail in Colorado. However, the statute does not allow for new cash-bail agents. Currently, there are only three cash-bail agents in Colorado, and this type of bail bonding agent will be eliminated through attrition.

Although the Division of Insurance (Division) no longer issues cash-bonding agent registrations, practitioners who possess this registration are required to post a cash qualification bond with the Division of at least \$50,000. The purpose of a cash qualification bond is to secure payment of defaulted bonds (if a defendant fails to appear in court) and to pay any final, non-appealable judgment for failure to return collateral, including costs and attorney's fees, if awarded.¹³

¹³ Department of Regulatory Agencies. Division of Insurance Bail Registrants Rules. Regulation 7-1-2, Section 2.

The Division must be designated as an authorized signatory with right of survivorship on financial instruments such as a bank account, certificate of deposit, or security that funds the cash qualification bond.¹⁴

Additionally, professional cash-bail agents are also required to post a qualification bond with the Division of at least \$50,000. Professional cash-bail agents are authorized to provide bail for a person for not more than twice the amount of the cash qualification bond posted with the Division.¹⁵ For example, professional cash-bail agents who post a \$50,000 cash qualification bond, which is the required minimum, with the Division are able to write a bond of up to \$100,000 for an individual. However, the statute does not limit the number of bail bonds professional cash-bail agents can furnish.

If default judgment of a bond occurs, the bail bonding agent has 120 days to either pay the court the entire bond amount or produce the defendant. After 120 days, the bail bonding agent is placed “on the board,” which essentially means that he or she cannot write any bail until the judgment is satisfied with the court. If, after 120 days, the bail bonding agent fails to produce either, the court sends a “notice” to the Division informing it that the bail bonding agent is out of compliance with the laws. Upon receiving the notice, the Division may initiate the process to utilize the cash qualification bond for payment to the court and initiate formal discipline upon the practitioner.

Prior to writing bail, professional cash-bail agents are required to obtain a registration from the Division. In order to qualify for a bail bonding agent registration, an applicant must:¹⁶

- Disclose whether he or she has been convicted of a felony, entered a guilty plea to a felony, had accepted a plea of *nolo contendere* to a felony or engaged in or committed an act that violates the statute within the last 10 years;
- Supply a full-face photograph;
- Submit to a fingerprint-based criminal history background check; and
- Have been licensed as an insurance producer who furnishes bail in Colorado for at least four years.

Bail bonding agents may provide an indemnity agreement to consumers who utilize their services, which holds the bail bonding agent harmless.

The indemnity agreement must be in writing, signed by the bail bond agent and defendant and contain documentation that the indemnitor received copies of the signed and dated disclosure.¹⁷ Additional information includes:¹⁸

- The amount of bail set in the case,
- The name of the defendant,

¹⁴ § 10-23-105(3), C.R.S.

¹⁵ § 10-23-105(2), C.R.S.

¹⁶ §§ 10-23-103(1)(a),(b), (2) and (3), C.R.S.

¹⁷ § 10-23-108(1)(a), C.R.S.

¹⁸ § 10-23-108(1)(a)(IV), C.R.S.

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- The court case number (if available),
 - The court where the bond is executed,
 - The premium charged,
 - The amount and type of collateral held by the bail bonding agent, and
 - Conditions under which the collateral will be returned.

If collateral is used, bail bonding agents are also required to provide the defendant a collateral receipt. This receipt must be in writing, signed by the bail bonding agent and defendant, and contain a full description of the collateral, including the condition of the collateral.¹⁹

The statute authorizes the Commissioner of Insurance (Commissioner) to impose discipline on practitioners for violations of the statute and applicable rules.²⁰

Specifically, the Commissioner may deny, suspend, revoke or refuse to renew a registration for the following, including but not limited to:

- Failed to post the required qualification bond with the Division;
- Convicted of a felony or pled guilty or *nolo contendere* to a felony within the past 10 years;
- Served a sentence for a felony in a detention facility or under the supervision of the State Parole Board or any probation department in the past 10 years;
- Continued to execute bail in any court in Colorado while on the board if the bail forfeiture judgment that resulted in the registrant's being placed on the board has not been paid, stayed, vacated, exonerated or discharged; and
- Solicited bail bond business where prisoners are confined, arraigned or in custody.

Generally, the Commissioner has fining authority for violations of the statute or applicable rules. The minimum fine is \$300 and the maximum fine is \$1,000 per violation.²¹

The Commissioner is also authorized to issue a cease and desist order when a registrant is acting in a manner that is an imminent threat to the health and safety of the public. Cease and desist orders may also be issued if a person is conducting business without the required registration.²²

¹⁹ § 10-23-108(1)(c), C.R.S.

²⁰ § 10-23-106(1)(b), C.R.S.

²¹ § 10-23-106(2), C.R.S.

²² § 10-23-106(10)(a), C.R.S.

Program Description and Administration

The regulation of cash-bonding agents and professional cash-bail agents (collectively referred to as bail bonding agents) is created in section 10-23-101, *et seq.*, Colorado Revised Statutes.

Regulatory oversight for bail bonding agents is vested with the Commissioner of Insurance (Commissioner) who is responsible for, among other things, rulemaking and imposing discipline on practitioners for violations of the statute and applicable rules.

The Division of Insurance (Division) staff is tasked with a variety of administrative functions related to the regulation of bail bonding agents. Duties include, but are not limited to: issuing registrations, researching complaints and providing support for the Commissioner.

In fiscal year 14-15, the Commissioner devoted 0.25 full-time equivalent (FTE) employees to provide regulatory oversight of bail bonding agents. The FTE allocated for the oversight are as follows:

- Administrative Assistant III,
- Administrator III,
- Criminal Investigator II, and
- Rate/Financial Analyst IV.

Table 2 highlights the total program expenditures for the regulation of bail bonding agents in fiscal years 10-11 through 14-15.

Table 2
Total Program Expenditures in Fiscal Years 10-11 through 14-15

Fiscal Year	Total Program Expenditures
10-11	\$33,343
11-12	\$88,162
12-13	\$77,569
13-14	\$34,778
14-15	\$31,586

As highlighted in Table 2, there was an increase in expenditures in fiscal years 11-12 and 12-13, which are attributable to the increased utilization of legal resources concerning bail bonding agents who violated the statute.

Registration

The statute requires bail bonding agents to obtain a registration from the Division prior to providing services to consumers. In order to be eligible to obtain a registration, an applicant, among other things, is required to obtain a cash qualification bond of at least \$50,000, where the Division has signatory authority. The cash qualification bond is used when a forfeiture of bail occurs. Most often, the forfeiture occurs when a defendant fails to appear in court for his or her scheduled court date(s). The cash qualification bond is also used to pay any final, non-appealable judgment for failure to return collateral, including costs and attorney's fees, if awarded.

Table 3 illustrates the total number of registered bail bonding agents in fiscal years 10-11 through 14-15.

Table 3
Total Number of Bail Bonding Agents in Fiscal Years 10-11 through 14-15

Fiscal Year	Cash-Bonding Agent	Professional Cash-Bail Agents	Total
10-11	4	35	39
11-12	3	33	36
12-13	3	29	32
13-14	3	28	31
14-15	3	27	30

As Table 3 indicates, the number of cash-bonding agents has remained constant, and the number of professional cash-bail agents has declined slightly in each of the past five fiscal years.

Complaints/Disciplinary Actions

In the past five fiscal years, the Division has received complaints concerning bail bonding agents. Table 4 highlights the total number of complaints to the Division, as well as the nature of complaints in fiscal years 10-11 through 14-15.

Table 4
Number of Allegations and Complaints in Fiscal Years 10-11 through 14-15

Nature of Allegations	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Practicing without a Registration	0	0	0	0	0
Standard of Practice	22	10	3	0	2
Fee Dispute (Deed of Trust)	3	3	1	0	0
Scope of Practice	2	2	2	0	0
Sexual Misconduct	0	0	1	0	0
Substance Abuse	0	0	1	0	0
Theft	0	0	0	0	0
Felony Conviction	0	0	0	0	0
Other	35	12	4	4	5
Total Number of Complaints	37	15	5	4	5

As delineated in Table 4, the total number of allegations does not add up to the total number of complaints because often there are multiple allegations within a single complaint. Also, Table 4 shows the largest number of complaints against bail bonding agents in the past five fiscal years was in the “Standard of Practice” and “Other” categories. The substance of the complaints varied in the “Standard of Practice” category, but some of the most common were related to bail bonding agents who failed to maintain proper records and failed to pay the required premium tax to the Division.

Also, the “Other” category includes complaints related to issues such as bail bonding agents who fail to provide annual and semi-annual reports to the Division. Additional types of “Other” complaints include bail bonding agents who failed to satisfy a forfeiture of a bond with their cash qualification bond. This means that the bail bonding agent failed to pay the court the established bond amount when a defendant failed to appear in court.

Additionally, Table 5 shows the total number of disciplinary actions imposed by the Commissioner in fiscal years 10-11 through 14-15. Professional cash-bail agents received the majority of disciplinary actions imposed.

Table 5
Total Number of Final Agency Actions in Fiscal Years 10-11 through 14-15

Type of Action	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Revocation/Surrender/Voluntary Relinquishment	0	0	1	0	0
Suspension	0	0	0	0	0
Probation/Practice Limitation	0	0	1	0	0
License Denials and Withdrawals in Lieu of Denial	5 (one cash-bonding agent)	2	0	0	1
Fines	1	1	1	1	1
Other	2	3	5	1	1
Total Disciplinary Actions (includes fines)	8	6	8	2	3
Dismissals	0	0	0	0	0
Warning Letters	0	7	4	0	0
Total	8	13	12	2	3

As Table 5 shows, the “Other” category contained the highest number of disciplinary actions imposed by the Commissioner. The types of violations resulting in discipline in this category varied, but the most common were for bail bonding agents failing to comply with existing laws, and failing to use their cash qualification bond for a forfeiture of bail.

The “Other” category includes stipulation in Final Agency Orders such as, requiring bail bonding agents to comply with the current requirement to post a \$50,000 qualification bond.

Also, as indicated in Table 5, the Commissioner issued 11 Warning Letters to bail bonding agents in the past five fiscal years. Warning letters are not formal discipline against a practitioner, but rather provide a record for the Division if there are additional violations by the practitioner. Warning Letters were issued for a variety of reasons, including, but not limited to: using improper forms and failing to file timely reports with the Division.

The Commissioner is authorized to impose fines on bail bonding agents for violations of the statute or applicable rules. Table 6 highlights the total fines imposed in the past five fiscal years. In each of the fiscal years, there was one fine imposed, and all of the fines were imposed on professional cash-bail agents, with the exception of fiscal year 14-15, when a cash-bonding agent was assessed a fine.

Table 6
Total Fines Collected in Fiscal Years 10-11 through 14-15

Fiscal Year	Total Fines Collected
10-11	\$12,000
11-12	\$1,000
12-13	\$25,000
13-14	\$500
14-15	\$500

The Commissioner collected a total of \$39,000 in fines for violations of the statute in the past five fiscal years. For example, fines were levied for bail bonding agents who failed to pay the required premium tax to the Division and failing to file the required semiannual report to the Division.

In fiscal years 10-11 and 12-13, the Commissioner imposed fines on two professional cash-bonding agents, one in each fiscal year. Fines were imposed for multiple violations of the statute, including failing to respond to a court’s notice of bail forfeiture, failing to maintain the required \$50,000 cash qualification bond and improperly taking a consumer’s deed of trust.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Commissioner has the authority, in section 10-23-106(1)(d), C.R.S., to deny, suspend, or revoke a bail bonding agent’s registration if the practitioner was convicted of a felony or pled guilty or *nolo contendere* to a felony within the past 10 years. During the past five fiscal years, the Commissioner did not deny, revoke or suspend any bail bonding agents’ registrations based on past criminal history.

Analysis and Recommendations

Recommendation 1 – Continue the regulation of cash-bonding and professional cash-bail agents for nine years, until 2026.

When a person is arrested for a crime, the court will often set a specific amount of bail for the defendant to satisfy in order to obtain his or her release from custody.

Specifically, in cases where the court determines that bail is required to ensure that the accused appears in court for all of his or her criminal proceedings, the court will have a bail hearing.²³ The bail amount is established by the court during a bail hearing.

Bail is the amount of money, property or bond that a defendant must pledge to the court as security for his or her appearance at court proceedings.²⁴

There are three types of bail bonding professionals who are regulated in Colorado: cash-bonding, professional cash-bail and surety agents. This sunset review focuses on cash-bonding and professional cash-bail agents only (collectively referred to as “bail bonding agents”).

Since surety bail agents are connected to insurance companies and are required to possess an insurance producer’s license prior to providing bail, they are included in the 2016 sunset review of the Division of Insurance (Division).

Bail bonding agents are required to secure a registration from the Division prior to providing services. Cash-bonding agents are authorized to write an unlimited amount of bail to an unlimited number of clients. However, in 1999, via House Bill 1329, the General Assembly instituted a new bail bond agent classification: professional cash-bail agent. As a result, new cash-bonding agent registrations are not available. Current registrants are permitted to practice in Colorado and the registration classification will be eliminated through attrition.

Professional cash-bail agents are limited to writing bail for not more than twice their cash qualification bond. The purpose of a cash qualification bond is to secure payment of defaulted bonds (a defendant fails to appear in court) and to pay any final, non-appealable judgment for failure to return collateral, including costs and attorney’s fees, if awarded.²⁵ However, professional cash-bail agents may write an unlimited number of bonds.

Bail bonding agents are required to post a cash qualification bond with the Division of at least \$50,000. The Division has signatory authority for the cash qualification bonds. Most commonly, the required cash qualification bond is a certificate of deposit.

²³ Find Law. *Bail and Bonds*. Retrieved June 14, 2016, from <http://criminal.findlaw.com/criminal-legal-help/bail-bonds.html>

²⁴ West’s Encyclopedia of American Law, Edition 2 (2008).

²⁵ Department of Regulatory Agencies. Division of Insurance Bail Registrants Rules. Regulation 7-1-2, Section 2.

Securing a registration from the Division serves important functions. First, it ensures that bail bonding agents have fulfilled the minimum statutory requirements to practice in Colorado. This provides assurance to the court that if a defendant fails to appear for his or her court proceedings, it will receive compensation in the amount of the forfeited bail amount.

Regulation also provides protection to consumers by limiting the fees bail bonding agents can charge. In fact, the statute prohibits bail bonding agents from charging fees of more than 15 percent (a minimum of \$50) of the amount of bail furnished. Bail bonding agents are also authorized to charge bail bond fees charged by a court or law enforcement action and fees for the actual cost of storing collateral in a secure, self-service public storage facility. The limitation ensures that bail bonding agents are not charging exorbitant fees, which could prevent defendants from obtaining bail.

At times, defendants are not financially able to pay the fee bail bonding agents charge to post bond. If this situation occurs, defendants and/or indemnitors often use collateral including real property as a means to utilize the services of bail bonding agents to cover the premium, commission or fee for the bail bond, compliance with the bond and any actual costs incurred as a result of the issuance of the bond. For example, a bail bonding agent may submit a deed of trust to the county where real property is located. The deed of trust is a lien on the property, and once the monies due are paid to the bail bonding agent and the court, if necessary, by the defendant, the bail bonding agent removes the deed of trust from the property.

The regulation of bail bonding agents protects consumers related to the release of collateral. The statute requires the return of collateral within 14 days after receipt of a copy of the court order releasing the bond and required the release of a deed of trust within 35 days after receiving notice of the conclusion of all court proceedings.

Additionally, the bail bonding registration enables the Commissioner of Insurance (Commissioner) to impose discipline on bail bonding agents for violations of the statute or applicable rules. Information gathered during the course of this sunset review indicates that the Commissioner has, in fact, imposed discipline on bail bonding agents, including assessing fines. Doing so provides a mechanism to enhance consumer protection.

Bail bonding agents' amount of bonds written has continued to decline in the past five fiscal years. There are numerous explanations for the decrease, including courts offering defendants their release on a personal recognizance bond, which essentially enables a defendant to be released from custody without posting a bond with the court. If the defendant fails to appear for his or her required court dates, the defendant, when apprehended, is then required to pay the bail amount to the court.

However, as Table 1 in this report indicates, in fiscal year 14-15, bail bonding agents wrote more than \$60 million in bail. This represents a large amount of bail, in real dollars, in Colorado.

As such, bail bonding agents provide an important service for defendants, and in order to continue to provide these services with regulatory safeguards to protect consumers from harm, the General Assembly should continue the regulation (registration) of bail bonding agents for nine years, until 2026.

Recommendation 2 – Authorize the Commissioner to release a deed of trust if the bail bonding agent refuses or is unable to release the lien.

Oftentimes, when a defendant is arrested and bail is set by the court, the defendant does not have the funds to satisfy the bail requirements. A defendant may contact a bail bonding agent to post a bond with the court to satisfy the bail requirement. If the defendant cannot pay the bail bonding agent the fee for posting the bond to the court, he or she sometimes chooses to use property as collateral, such as a home.

If a defendant uses real property as collateral, the bail bonding agent instructs the defendant and the property owner, if it is someone other than the defendant, to sign a “deed of trust.” A deed of trust is essentially a lien against the property used in satisfying the bail amount to be paid to the bail bonding agent.

The deed of trust is then recorded in the county where the property is located.

If the defendant fails to appear for his or her required court dates, the bail bonding agent must pay the court the entire bail amount, which was set by the court. If the indemnitor does not have the funds needed to pay the court, the bail bonding agent may take steps to liquidate the collateral, which can include proceeding with a foreclosure action.

If the defendant appears at all of his or her court hearings, at the end of the trial or hearings, the defendant, or most often the defendant’s attorney, will ask the court to release the bond supplied to the court by the bail bonding agent.

After the bond is released by the court and after all of the fees are paid to the bail bonding agent, the bail bonding agent will contact the county where the deed of trust was filed to release the lien on the property. In fact, the bail bonding statute requires the release of the lien within 35 days after receiving notice that the time for appealing the order that exonerated the bail bond has expired.²⁶

However, if the bail bonding agent refuses or is unable to release the lien, the deed of trust remains on the property. This is problematic for consumers when all of the court proceedings are complete, and the deed of trust may remain on the property. In order to alleviate the potential issues associated with the removal of the deed of trust when a legal proceeding against a defendant has been resolved, the Commissioner should have the authority to release the deed of trust after a period of three years. Doing so would provide protection to consumers who did not have the lien against their home removed in certain instances.

²⁶ § 10-23-108(5)(d), C.R.S.

Importantly, the Commissioner should not be authorized to remove the lien against a property if there are any outstanding fees owed the bail bonding agent that have not been satisfied.

In order to ensure that consumers have a deed of trust released on their property if unforeseen circumstances occur with the bail bonding agent, the General Assembly should grant the Commissioner the authority to release the deed of trust.

Administrative Recommendation 1 – The Division should conduct periodic audits of bail bonding agents’ premium fee statements.

Currently, section 10-23-104(3), Colorado Revised Statutes, authorizes the Division to audit bail bonding agents’ premium fee statements. Specifically, the Division may examine any books, records, agreements or memoranda bearing upon the matters to be included in the premium statements.²⁷

Bail bonding agents are required to pay the Division one percent of the total gross amount of all premiums and fees collected or contracted for furnishing bail.²⁸ The Division utilizes the premium fee to assist the Division in providing regulatory oversight of bail bonding agents.

The premium fee is due to the Division each January, and bail bonding agents are subject to fines by the Division if they fail to pay their respective premium fee to the Division.

As authorized in statute, the Division may perform audits on the premium fee statements. However, this sunset review revealed that the Division does not currently conduct any audits on premium fee statements.

Importantly, this sunset review did not identify current problems with the accuracy of the premium fee statements, but since the premium fee assists in the regulatory oversight for bail bonding agents, it is important they are accurate.

In order to ensure the accuracy of the premium statements submitted by bail bonding agents, the Division should begin implementing a process where periodic, random audits are conducted. Performing these audits would ensure that bail bonding agents are accurately reporting the premium fees collected.

²⁷ § 10-23-104(3), C.R.S.

²⁸ § 10-23-104(1)(c), C.R.S.