

33-17-1203

STATE BUSINESS & INDUSTRY

HOUSE NO. 11

DATE 2/10/05

BILL NO. SB327

At the last legislative session, the Montana bail bonds association stood side-by-side with the insurance commission to pass legislation to further educate the bail industry in which Ms. Pichette promised the insurance commission would work with us to help us further our education in our field. I decided to put a course together for the bondsmen and bonds-women in our state. I spent weeks on this project. I followed the course submission criteria to the letter, including an hour-by-hour breakdown of what would be taught and by whom, as required. I contacted a law enforcement instructor to teach us handcuffing techniques, arrest techniques, self-defense, building searches, and knife awareness. Myself, and president, Kelly Reisbeck, and a local judge were going to do an ethics presentation.

I submitted this course to the insurance commission and just before the deadline they rejected it saying that the 10 hours had to be broken down in 10-minute increments. This was not a requirement on the submission form. I couldn't get that done in time, as it would be nearly impossible as this was going to be 80% physical because the instruction would be done on gym mats. I also talked to some of the top course providers in the state, in which I was told that the Montana State Insurance Commission is the hardest entity to get course submission approval in all of the states that they provide service in.

I decided not to continue my efforts. In addition it is not up to us to provide courses. If the insurance commission wants us further educated in our field they can find, or invent courses for surety bail agents. With or without the insurance commission's help there is not one course provider in the state that even remotely addresses our profession as bondsmen. The insurance commission suggested that we take ethics courses, but ethics courses in running a life insurance agency is of no help to us either.

Myself, taking five hours of auto insurance classes and six hours of life insurance classes does not teach me to use a taser properly in the field, does not teach me ethics in respect with working with courts, or how best to handle a knife wielding bail jumper. Other insurance providers in the state have 100s of beneficial classes to choose from. We surety bail agents have none.

We feel that we are being discriminated against. We feel that our industry should not have to expend 1000s every year to attend unrelated classes until they become available. If this bill does not pass, we as surety agents will be subject to two more years of undue time and expense. The insurance commission knows this very well, and yet they will oppose this bill so that they can keep this false sense alive that the bondsmen and bonds-women of Montana are getting further educated in their field, which is nothing more than window dressing. Please help our industry pass this vital section of this bill.

46 - 9 - 401 (A)

The purpose of this bill is to protect the bail bond industries' very survival in this state. Some judges who allow "TIME PAY BAIL" in increments, ~~take~~ takes our industry completely out of the loop. This is pre-punishing the defendant pre-adjudication and will punish indigent families. It is far less punishing for a defendant to post a one-time fee of 10% to a bondsman than to pay \$100 per month on a \$1000 bail. Where is the presumption of innocence here? The judges are relying on a 9th circuit court ruling that "TIME PAY BAIL" is acceptable. I filed that appeal, and my understanding of the ruling was that it didn't give the green light to judges to do TIME PAY BAIL, rather it stated that it was not a civil rights violation against myself as a bondsman.

Our industry must secure a state license to be sureties and issue surety bonds. Our surety bonds guarantee one of two things; we will either bring the defendant back to justice, or pay the bond in full. When a judge or court takes TIME PAY BAIL payments they are acting as their own surety in that all payments will be made and the defendant will show up. If the defendant does not show up and quits making payments the issuance of a warrant does not guarantee this revenue loss to the court or the defendant showing up. Thus, the judge is gambling with court revenue, which equates to taxpayer dollars and is therefore acting as a surety of which he or she is not licensed. It is made clear in statute 46 - 9 - 402 already, which states: No attorney at law and no official authorized to admit another to bail to act as a surety or furnish bail. 46 - 9 - 401 section A: Under forms of bail clearly states that a defendant must deposit with the court an amount equal to the required bail of cash, stocks, bonds, certificates of deposit or other personal property approved by the court. The judges are already side-stepping these two statutes and are breaking the law here. I do not believe the ninth circuit courts' opinion can override current state statutes that are in effect.

A JP or City Judge cannot sale real estate without a license. I ask "why not"? If they can act as a surety, which requires a state license, why can't they sale real estate without a state license, what's the difference? The dictionary defines surety as "One providing security against loss, damage, or failure to do something, or a person who agrees to be legally responsible for the debt, default, etc. of another." This is exactly to the letter what a licensed surety bail bonds person does. A court judge cannot fulfill any of the criteria in this definition. We as surety bail bondsmen have a due process property right, and a state created right to do our business without governmental interference.

This TIME PAY BAIL to our industry is a flagrant violation to both. The non-passage of this bill will also create a paperwork nightmare for court clerks in which they will not only have to keep records for fine payments post adjudication, but will now have to keep records for TIME PAY BAIL payments pre-adjudication. We do not have a problem with a judge taking payments on a speeding ticket pre-adjudication, but it gives the green light to other judges to take TIME PAY BAIL for far greater jailable offenses. A remedy for this would have the ticket state "Must be paid in full by such and such date, or appear".

If this bill does not pass and TIME PAY BAIL becomes epidemic, the mom and pop bail bond companies across the state will have to close their doors, and we will have to surrender all 7,000 defendants we supervise at no taxpayer expense back to the judicial system. Why should a simple luxury to the judges called TIME PAY BAIL, which is merely just pre-payment of fines wipe out an entire vital Montana industry. We urge you to pass this bill so that our industry in this state can remain healthy.

AFTER A JUDGE OFFERS TIME PAY BAIL
A DEFENDANT DOES NOT KNOW "WE" EXIST