

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
95-33 (COR)	Michael F.Q. San Nicolas FRANK B. AGUON, JR. Brant T. McCreddie	AN ACT TOAMEND 8 GCA §40.20, ADD A NEW 8 GCA §40.25.5, ADD A NEW 11 GCA CHAPTER 79, ADDA NEW 11 GCA §103104(a)(7), AND ADD A NEW 12 GARR CHAPTER 2; RELATIVE TO ADDRESSING OVERCROWDING AT THE DEPARTMENT OF CORRECTIONS DUE TO THE DETAINEE POPULATION BY AUTHORIZING THE USE OF BAIL BONDS FOR COURT-ORDERED BAIL AND TO AUTHORIZE THE JUDICIARY OF GUAM TO ESTABLISH A UNIFORM BAIL SCHEDULE; THIS ACT SHALL BE CITED AS THE "BAIL REFORM ACT OF 2015."	05/05/15 4:52 p.m.	05/06/15	Committee on Finance and Taxation, General Government Operations and Youth Development			



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

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May 6, 2015

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio** 
Chairperson, Committee on Rules

Subject: Referral of Bill No. 95-33(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 95-33(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 95-33 (CON)

Introduced by:

Michael F.Q. San Nicolas
F.B. Aguon, Jr.

Brant T. McCreddie

AN ACT TO AMEND 8 GCA §40.20, ADD A NEW 8 GCA §40.25.5, ADD A NEW 11 GCA CHAPTER 79, ADD A NEW 11 GCA §103104(a)(7), AND ADD A NEW 12 GARR CHAPTER 2; RELATIVE TO ADDRESSING OVERCROWDING AT THE DEPARTMENT OF CORRECTIONS DUE TO THE DETAINEE POPULATION BY AUTHORIZING THE USE OF BAIL BONDS FOR COURT-ORDERED BAIL AND TO AUTHORIZE THE JUDICIARY OF GUAM TO ESTABLISH A UNIFORM BAIL SCHEDULE; THIS ACT SHALL BE CITED AS THE "BAIL REFORM ACT OF 2015."

2015 MAY -5 PM 4:52

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Short Title.** This Act *shall* be cited as the "Bail Reform Act of
3 2015."

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
5 that, according to the Office of Public Accountability's December 2014
6 Performance Audit, DOC's ACF currently houses six hundred ninety (690) people,
7 with pre-trial detainees comprising approximately sixty percent (60%) of the
8 prison population.

9 *I Liheslatura* further finds that the population of the Department of
10 Corrections' Adult Correctional Facility is excessive. Since around sixty percent
11 (60%) of the incarcerated population is comprised of pre-trial detainees, addressing

1 this approximately four hundred forty-nine (449) detainee population is an
2 important component in addressing overcrowding.

3 *I Liheslatura* finds that updating Guam’s bail statutes is one step to
4 alleviating the large number of pre-trial detainees. Allowing the limited use of bail
5 bonds and the creation of a conditional uniform bail schedule are resourceful ways
6 to decrease the detainee population, with minimal long term costs to the
7 Government of Guam.

8 It is therefore the intent of *I Liheslaturan Guåhan* to update Guam’s bail
9 statutes by allowing the use of bail bonds for court-ordered bail and to authorize
10 the Unified Judiciary of Guam to establish a Uniform Bail Schedule.

11 **Section 3. Allowing the Use of Bail Bond Agencies.** §40.20 of Chapter 40
12 Title 8, Guam Code Annotated is hereby *amended* to read:

13 **“§ 40.20. Bail Conditions; Defined, When to be Used.**

14 Where the judge determines that release of the person charged on
15 his/her own recognizance will not reasonably assure his/her appearance as
16 required, or will endanger the safety of any other person or the community,
17 the judge *shall* impose the least onerous of the following conditions which is
18 reasonably likely to assure the person’s appearance as required and the
19 safety of any other person and the community, or, if no single condition
20 gives that assurance, the least onerous combination of the following
21 conditions:-

22 (a) placement of the person in the custody of a designated person or
23 organization agreeing to supervise him/her and to assist him/her in appearing
24 in Court;

25 (b) placement of restrictions on the activities, movements,
26 associations and residence of the person;

1 (c) execution of a bond in an amount specified by the judge or
2 pursuant to a Uniform Bail Schedule established by the Judicial Council,
3 which shall not include crimes under Chapter 16, Chapter 19, Chapter 22,
4 Chapter 25, Chapter 25A, Chapter 26, Chapter 30, or §§ 34.20, 34.30,
5 34.40, or 34.50(b)(1) of Chapter 34, Chapter 37, Chapter 40, all of Title 9,
6 Guam Code Annotated; such bond in the discretion of the judge to be either
7 unsecured or secured in whole or in part by the deposit of cash or other
8 property, or by the obligation of qualified sureties to include a Bail Bond
9 Agency licensed as provided in Chapter 79 of Division 3, Title 11, Guam
10 Code Annotated. A Bail Bond Agency shall not act as a surety for the
11 deposit of cash or other property for a bond for crimes under Chapter 16,
12 Chapter 19, Chapter 22, Chapter 25, Chapter 25A, Chapter 26, Chapter 30,
13 or §§ 34.20, 34.30, 34.40, or 34.50(b)(1) of Chapter 34, Chapter 37, Chapter
14 40, all of Title 9, Guam Code Annotated;

15 (d) release of the person during working hours, but with the condition
16 that he/she return to custody at specified times; or

17 (e) any other condition reasonably necessary to assure appearance as
18 required and the safety of any other person and the community.”

19 **Section 4. Bail Bond Agency as Surety.** A new §40.25.5 is hereby added
20 to Chapter 40, Title 8, Guam Code Annotated, to read:

21 “§ 40.25.5. **Bail Bond Agency as Surety.**

22 (a) Sureties shall include but not be limited to bail bond agencies
23 licensed pursuant to 11 GCA Chapter 79.

24 (b) Monthly Reports on Bail Bonds to the Director of the Department
25 of Revenue and Taxation. The Unified Judiciary of Guam shall provide
26 monthly reports to the Director of the Department of Revenue and Taxation
27 on the status of bail bonds provided by Bail Bond Agencies licensed under

1 11 GCA Chapter 79. Such reports *shall* include the name of the Bail Bond
2 Agency, the Qualified Agents as defined in 11 GCA §79101(l) of such
3 agencies, the defendants for which such Bail Bond Agencies act as sureties,
4 the bail amounts for each such defendant, and whether the bonds for such
5 defendants are posted, exonerated, or forfeited.”

6 **Section 5. Bail Bond Agency.** A *new* Chapter 79 is hereby *added* to
7 Division 3, Title 11, Guam Code Annotated, to read:

8 **“CHAPTER 79**
9 **BAIL BOND AGENCY**

10
11 § 79101. Definitions.

12 § 79102. Discretion of Courts to Accept or Reject a Surety or Bond.

13 § 79103. Bail Bond Agency and Bail Bond Agent Authority and Scope.

14 § 79104. Bail Bond Agency License Requirements.

15 § 79105. Bail Bond Agent License Requirements.

16 § 79106. License Applications.

17 § 79107. License Cards, Certificates; Advertising; Notice of Changes.

18 § 79108. Bail Bond License Fees.

19 § 79109. Notice Concerning Agent’s Status.

20 § 79110. Time Frame to Post Bonded Bail.

21 § 79111. Bail Bond Maximum Rate.

22 § 79112. Collateral for Bail Bond Service.

23 § 79113. Unprofessional Conduct.

24 § 79114. Complaints.

25 § 79115. Statement of Charges; Hearing.

26 § 79116. Statement of Charges; Notice.

27 § 79117. Unlicensed Activity; Criminal Penalties.

1 § 79118. Application of Administrative Law.

2 § 79119. Director's Powers.

3 § 79120. Failure of Criminal Defendant to Uphold Bail Conditions.

4
5 **§ 79101. Definitions.**

6 Unless the context clearly requires otherwise, the following
7 definitions apply throughout this Chapter:

8 (a) 'Bail bond agency' *means* a business that sells and issues
9 corporate surety bail bonds or that provides security in the form of personal
10 or real property to ensure the appearance of a criminal defendant before the
11 courts of Guam or the United States.

12 (b) 'Bail bond agent' *means* a person who is employed by a bail bond
13 agency and engages in the sale or issuance of bail bonds, but does not mean
14 a clerical, secretarial, or other support person who does not participate in the
15 sale or issuance of bail bonds.

16 (c) 'Bail bond recovery agent' *means* a person who is under contract
17 with a bail bond agent to receive compensation, reward, or any other form of
18 consideration for locating, apprehending, and surrendering a fugitive
19 criminal defendant for whom a bail bond has been posted. 'Bail bond
20 recovery agent' does not include a Marshal of the Unified Judiciary of
21 Guam.

22 (d) 'Board' *means* the Banking and Insurance Board.

23 (e) 'Branch office' *means* any office physically separated from the
24 principal place of business of the licensee from which the licensee or an
25 employee or agent of the licensee conducts any activity meeting the criteria
26 of a bail bond agency.

1 (f) 'Collateral or security' *means* property of any kind given as
2 security to obtain a bail bond.

3 (g) 'Department' *means* the Department of Revenue and Taxation.

4 (h) 'Director' *means* the Director of the Department of Revenue and
5 Taxation.

6 (i) 'Disciplinary authority' *means* the Banking and Insurance Board.

7 (j) 'Indemnitor' *means* the person placing security with an
8 agency/agent, to secure the agency against loss for the release of a
9 defendant(s) on a bail bond.

10 (k) 'Licensee' *means* a bail bond agency, a bail bond agent, or a
11 qualified agent.

12 (l) 'Qualified agent' *means* an owner, sole proprietor, partner,
13 manager, officer, or chief operating officer of a company who meets the
14 requirements set forth in this Chapter for obtaining a bail bond agency
15 license.

16 (m) 'Unlicensed practice' *means*:

17 (1) Practicing a profession or operating a business without
18 holding a valid, unexpired, unrevoked, and unsuspended license to do
19 so; or

20 (2) Representing to a person, through offerings, advertisements,
21 or use of a professional title or designation, that the individual or
22 business is qualified to practice a profession or operate a business
23 without holding a valid, unexpired, unrevoked, and unsuspended
24 license to do so.

25 **§ 79102. Discretion of Courts to Accept or Reject a Surety or Bond.**

26 Nothing in this Chapter limits the discretion of the courts of Guam to
27 accept or reject a particular surety or bond in a particular case.

1 **§ 79103. Bail Bond Agency and Bail Bond Agent Authority and Scope.**

2 (a) Only bail bond agencies licensed under this Chapter are authorized
3 to charge a premium to post bail for a defendant. Only licensed bail bond
4 agencies *shall* engage in or employ others to engage in any activity that *may*
5 be performed by bail bond agents under the provisions of this Chapter.

6 (b) Only bail bond agents employed by a bail bond agency *may*
7 engage in the business of sale or issuance of bail bonds to secure a
8 defendant's release from custody. Only bail bond agents *may* represent their
9 respective bail bond agency of employment when working with law
10 enforcement to ensure bail conditions are met, or if they are not met, to
11 assist law enforcement as needed to recover the detainee.

12 **§ 79104. Bail Bond Agency License Requirements.**

13 In addition to meeting the minimum requirements to obtain a license
14 as a bail bond agent, a qualified agent *must* meet the following additional
15 requirements to obtain a bail bond agency license:

16 (a) Pay any additional fees as established in law.

17 (b) An agency license issued under this Section *may* not be assigned
18 or transferred without prior written approval of the Director.

19 (c) Bond. No bail bond agency license *may* be issued under the
20 provisions of this Chapter unless the qualified agent files with the Director a
21 bond, executed by a surety company authorized to do business in Guam, in
22 the sum of ten thousand dollars (\$10,000) conditioned to recover against the
23 agency and its servants, officers, agents, and employees by reason of its
24 violation of the provisions of Subsection (d) of this Section. The bond *shall*
25 be made payable to the Territory of Guam, and anyone so injured by the
26 agency or its servants, officers, agents, or employees *may* bring suit upon the
27 bond in Guam courts. The suit *must* be brought not later than two (2) years

1 after the failure to return property in accordance with Subsection (d) of this
2 Section. If valid claims against the bond exceed the amount of the bond or
3 deposit, each claimant *shall* be entitled only to a pro rata amount, based on
4 the amount of the claim as it is valid against the bond, without regard to the
5 date of filing of any claim or action.

6 (1) Every licensed bail bond agency *must* at all times maintain
7 on file with the Director the bond required by this Subsection in full
8 force and effect. Upon failure by a licensee to do so, the Director *shall*
9 suspend the licensee's license and *shall* not reinstate the license until
10 this requirement is met.

11 (2) In lieu of posting a bond, a qualified agent *may* deposit in an
12 interest-bearing account, ten thousand dollars (\$10,000).

13 (d) Records; Finances; Disposition of Security. Every issued agency
14 *shall* keep adequate records for three (3) years of all collateral and security
15 received, all trust accounts required by this Section, and all bail bond
16 transactions handled by the bail bond agency, as specified by rule. The
17 records *shall* be open to inspection without notice by the Director or
18 authorized representatives of the Director.

19 (1) Every issued agency who receives collateral or security is a
20 fiduciary of the property and *shall* keep adequate records for three (3)
21 years of the receipt, safekeeping, and disposition of the collateral or
22 security. Every qualified agent *shall* maintain a trust account in a
23 federally insured financial institution located in Guam. All moneys,
24 including cash, checks, money orders, wire transfers, and credit card
25 sales drafts, received as collateral or security or otherwise held for a
26 bail bond agency's client *shall* be deposited in the trust account not
27 later than the third banking day following receipt of the funds or

1 money. A qualified agent *shall* not in any way encumber the corpus of
2 the trust account or commingle any other moneys with moneys
3 properly maintained in the trust account. Each qualified agent required
4 to maintain a trust account *shall* report annually under oath to the
5 Director the account number and balance of the trust account, and the
6 name and address of the institution that holds the trust account, and
7 *shall* report to the Director within ten (10) business days whenever the
8 trust account is changed or relocated or a new trust account is opened.

9 (2) Whenever a bail bond is exonerated by the court, the
10 qualified agent *shall*, within five (5) business days after written
11 notification of exoneration, return all collateral or security to the
12 person entitled thereto.

13 (e) Qualified bail bond agent as manager. No agency *may* operate
14 under a business name other than the name of the principal bail bond agency
15 and *must* have a qualified bail bond agent as manager of the office. The
16 qualified agent *shall* comply with the provisions of Subsection (d) of this
17 Section.

18 (f) License required for branch office. If a licensee maintains a
19 branch office, the licensee *shall* not operate that branch office until a branch
20 office license has been received from the Director. A bail bond agency *may*
21 apply to the Director for authority to establish one (1) or more branch offices
22 under the same name as the main office upon the payment of a fee as
23 prescribed by law. The Director *shall* issue a separate license for each
24 branch office showing the location of each branch which *shall* be
25 prominently displayed in the office for which it is issued. A corporation,
26 partnership, or sole proprietorship *shall* not establish more than one (1)
27 principal office within Guam.

1 **§ 79105. Bail Bond Agent License Requirements.**

2 An applicant *must* meet the following minimum requirements to
3 obtain a bail bond agent license:

4 (a) Be at least eighteen (18) years of age;

5 (b) Be a citizen or resident alien of the United States;

6 (c) Not have been convicted of a felony or crime of moral turpitude;

7 (d) Be employed by a bail bond agency or be a qualified agent of a
8 bail bond agency; and

9 (e) Pay the required fee.

10 **§ 79106. License Applications.**

11 Applications for licenses required under this Chapter *shall* be filed
12 with the Director on a form provided by the Director. The Director and
13 Board *may* require any information and documentation that reasonably
14 relates to the need to determine whether the applicant meets the criteria,
15 including fingerprints.

16 **§ 79107. License Cards, Certificates; Advertising; Notice of Changes.**

17 (a) The Director *shall* issue a bail bond agent license card to each
18 licensed bail bond agent. A bail bond agent *shall* carry the license card
19 whenever he or she is performing the duties of a bail bond agent and *shall*
20 exhibit the card upon request.

21 (b) The Director *shall* issue a license certificate to each licensed bail
22 bond agency.

23 (1) Within seventy-two (72) hours after receipt of the license
24 certificate, the licensee *shall* post and display the certificate in a
25 conspicuous place in the principal office of the licensee within Guam.

26 (2) It is unlawful for any person holding a license certificate to
27 knowingly and willfully post the license certificate upon premises

1 other than those described in the license certificate or to materially
2 alter a license certificate.

3 (3) Every advertisement by a licensee that solicits or advertises
4 business *shall* contain the name of the licensee, the address of record,
5 and the license number as they appear in the records of the Director.

6 (4) The licensee *shall* notify the Director within thirty (30) days
7 of any change in the licensee's officers or directors or any material
8 change in the information furnished or required to be furnished to the
9 Director.

10 **§ 79108. Bail Bond License Fees.**

11 (a) The following fees for a one (1) year period *shall* be charged by
12 the Department:

13 Title of Fee	14 Fee
15 Bail bond agency/branch office:	
16 Application	\$1,200
17 License renewal	\$1,150
18 Late renewal with penalty	\$1,300
19 Bail bond agent:	
20 Original license	\$550
21 License renewal	\$500
22 Late renewal with penalty	\$600
23 Change of qualified agent	\$250

24 (b) Notwithstanding the provisions of 11 GCA §161101(b), twenty-
25 five percent (25%) of the amount of fees paid pursuant to this Section, *shall*
26 be deposited in each of the following funds:

- 27 (1) the Better Public Service Fund,
- (2) the Police Services Fund,

- (3) the Department of Corrections Revolving Fund, and
- (4) the Judicial Building Fund.

§ 79109. Notice Concerning Agent’s Status.

(a) A bail bond agency *shall* notify the Director within ten (10) days after the death or termination of employment of any employee who is a licensed bail bond agent.

(b) A bail bond agency *shall* notify the Director within seventy-two (72) hours upon receipt of information affecting a licensed bail bond agent’s continuing eligibility to hold a license under the provisions of this Chapter.

§ 79110. Time Frame to Post Bonded Bail.

Bonds executed by a Bail Bond Agency *must* be provided to the court authorizing bail within twenty-four (24) hours of receipt of payment by the indemnitor.

§ 79111. Bail Bond Premium Charge Maximum Rate.

A bail bond agency *may* require as payment for bail bond services a charge of not more than fifteen percent (15%) of the bail amount set by a judge or magistrate of the Unified Judiciary of Guam.

§ 79112. Collateral for Bail Bond Service.

A Bail Bond Agency *may* only accept cash or real property as collateral for the payment of bail bond services.

§ 79113. Unprofessional conduct.

The following conduct, acts, or conditions constitute unprofessional conduct:

(a) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person’s profession or operation of the person’s business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of

1 competent jurisdiction is conclusive evidence of the conduct of the license
2 holder or applicant upon which a conviction or the final holding is based.
3 Upon a conviction, however, the judgment and sentence is conclusive
4 evidence at the ensuing disciplinary hearing of the guilt of the license holder
5 or applicant of the crime described in the indictment or information, and of
6 the person's violation of the statute on which it is based. For the purposes of
7 this Subsection, conviction includes all instances in which a plea of guilty or
8 nolo contendere is the basis for the conviction and all proceedings in which
9 the sentence has been deferred or suspended;

10 (b) Misrepresentation or concealment of a material fact in obtaining or
11 renewing a license or in reinstatement thereof;

12 (c) Advertising that is false, deceptive, or misleading;

13 (d) The suspension, revocation, or restriction of a license to engage in
14 any business or profession by competent authority in any state, federal, or
15 foreign jurisdiction. A certified copy of the order, stipulation, or agreement
16 is conclusive evidence of the revocation, suspension, or restriction;

17 (e) Failure to cooperate with the disciplinary authority in the course of
18 an investigation, audit, or inspection authorized by law by:

19 (1) Not furnishing any papers or documents requested by the
20 disciplinary authority;

21 (2) Not furnishing in writing an explanation covering the matter
22 contained in a complaint when requested by the disciplinary authority;

23 (3) Not responding to a subpoena issued by the disciplinary
24 authority, whether or not the recipient of the subpoena is the accused
25 in the proceeding; or

26 (4) Not providing authorized access, during regular business
27 hours, to representatives of the disciplinary authority conducting an

1 investigation, inspection, or audit at facilities utilized by the license
2 holder or applicant;

3 (f) Aiding or abetting an unlicensed person to practice or operate a
4 business or profession when a license is required;

5 (g) Practice or operation of a business or profession beyond the scope
6 of practice or operation as defined by law or rule;

7 (h) Misrepresentation in any aspect of the conduct of the business or
8 profession;

9 (i) Failure to adequately supervise or oversee auxiliary staff, whether
10 employees or contractors, to the extent that consumers *may* be harmed or
11 damaged;

12 (j) Failure to comply with an order issued by the disciplinary
13 authority;

14 (k) Conviction of any misdemeanor or felony relating to the practice
15 of the person's profession or operation of the person's business. For the
16 purposes of this Subsection, conviction includes all instances in which a plea
17 of guilty or nolo contendere is the basis for conviction and all proceedings in
18 which the sentence has been deferred or suspended;

19 (l) Interference with an investigation or disciplinary action by willful
20 misrepresentation of facts before the disciplinary authority or its authorized
21 representatives, or by the use of threats or harassment against any consumer
22 or witness to discourage them from providing evidence in a disciplinary
23 action or any other legal action, or by the use of financial inducements to
24 any consumer or witness to prevent or attempt to prevent him or her from
25 providing evidence in a disciplinary action;

26 (m) Engaging in unlicensed practice;

1 (n) Violating any of the provisions of this Chapter or the rules adopted
2 under this Chapter;

3 (o) Failing to meet the qualifications set forth in §§ 79104 and 79105
4 of this Chapter;

5 (p) Knowingly committing, or being a party to, any material fraud,
6 misrepresentation, concealment, conspiracy, collusion, trick, scheme, or
7 device whereby any other person lawfully relies upon the word,
8 representation, or conduct of the licensee;

9 (q) Assigning or transferring any license issued pursuant to the
10 provisions of this Chapter, except as provided in §79104 of this Chapter;

11 (r) Conversion of any money or contract, deed, note, mortgage, or
12 other evidence of title, to his or her own use or to the use of his or her
13 principal or of any other person, when delivered to him or her in trust or on
14 condition, in violation of the trust or before the happening of the condition;
15 and failure to return any money or contract, deed, note, mortgage, or other
16 evidence of title within thirty (30) days after the owner is entitled to
17 possession, and makes demand for possession, *shall* be prima facie evidence
18 of conversion;

19 (s) Failing to keep records, maintain a trust account, or return
20 collateral or security, as required by §79104 (d) of this Chapter;

21 (t) Any conduct in a bail bond transaction which demonstrates bad
22 faith, dishonesty, or untrustworthiness;

23 (u) Violation of an order to cease and desist that is issued by the
24 Director under this Chapter;

25 (v) Acting as or using the services of a bail bond recovery agent; or

26 (w) Misrepresenting or knowingly making a material misstatement or
27 omission in the application for a license.

1 **§ 79114. Complaints.**

2 Any person *may* submit a written complaint to the Department
3 charging a license holder or applicant with unprofessional conduct and
4 specifying the grounds for the charge. If the Director determines that the
5 complaint merits investigation, or if the Director has reason to believe,
6 without a formal complaint, that a license holder or applicant *may* have
7 engaged in unprofessional conduct, the Director *shall* investigate to
8 determine if there has been unprofessional conduct. A person who files a
9 complaint under this Section in good faith is immune from suit in any civil
10 action related to the filing or contents of the complaint.

11 **§ 79115. Statement of Charges; Hearing.**

12 (a) If the disciplinary authority determines, upon investigation, that
13 there is reason to believe that a license holder or applicant for a license has
14 violated §79113 of this Chapter or has not met a minimum eligibility criteria
15 for licensure, pursuant to 12 GARR Chapter 2 Article 4, the disciplinary
16 authority *shall* prepare and serve the license holder or applicant a statement
17 of charge, charges, or intent to deny or revoke. A notice that the license
18 holder or applicant *may* request a hearing to contest the charge, charges, or
19 intent to deny *must* accompany the statement. The license holder or
20 applicant *must* file a request for a hearing with the disciplinary authority
21 within twenty (20) days after being served the statement of charges or
22 statement of intent to deny. The failure to request a hearing constitutes a
23 default, whereupon the disciplinary authority *may* enter a decision on the
24 facts available to it.

25 (b) If a license holder or applicant for a license requests a hearing, the
26 disciplinary authority *must* fix the time of the hearing as soon as convenient,
27 but not earlier than thirty (30) days after the service of charge, charges, or

1 intent to deny. The disciplinary authority *may* hold a hearing sooner than
2 thirty (30) days only if the disciplinary authority has issued a summary
3 suspension or summary restriction.

4 **§ 79116. Statement of Charges; Notice.**

5 When a statement of charges is issued against a license holder or
6 applicant under §79115 of this Chapter, notice of this action *must* be given
7 to the owner or qualified agent of the employing bail bond agency.

8 **§ 79117. Unlicensed Activity; Criminal Penalties.**

9 (a) Any person who performs the functions and duties of a bail bond
10 agent in Guam without being licensed in accordance with the provisions of
11 this Chapter, or any person presenting or attempting to use as his or her own
12 the license of another, or any person who gives false or forged evidence of
13 any kind to the Director in obtaining a license, or any person who falsely
14 impersonates any other licensee, or any person who attempts to use an
15 expired or revoked license, or any person who violates any of the provisions
16 of this Chapter is guilty of a misdemeanor.

17 (b) A person is guilty of a misdemeanor if the person owns or operates
18 a bail bond agency in Guam without first obtaining a bail bond agency
19 license.

20 (c) The owner or qualified agent of a bail bond agency is guilty of a
21 misdemeanor if the owner or qualified agent employs any person to perform
22 the duties of a bail bond agent without the employee having in the
23 employee's possession a bail bond agent license issued by the Department.

24 **§ 79118. Application of Administrative Law.**

25 The Board, in making rules and regulations relative to the provisions
26 of this Chapter, *shall* act in accordance with the Administrative Adjudication
27 Law.

1 **§ 79119. Director’s Powers.**

2 In addition to those powers set forth in §79104 of this Chapter, the
3 Director or the Director’s designee has the authority to order restitution to
4 the person harmed by the licensee.

5 **§79120. Failure of Criminal Defendant to Uphold Bail Conditions.**

6 If a criminal defendant who has entered into a contract for a bail bond
7 with a bail bond agency fails to uphold the conditions of his or her release:

8 (a) The contracted bail bond agency will forfeit the bail bond
9 premium regulated under §79111 of this Chapter, to the Unified
10 Judiciary of Guam to defray the cost incurred for the recovery of the
11 criminal defendant. The Unified Judiciary of Guam *may* impose
12 additional charges to the bail bond agency not to exceed an aggregate
13 of fifteen percent (15%) of the bail amount inclusive of fees
14 surrendered;

15 (b) The bond posted by the contracted bail bond agency will
16 only be exonerated by the Unified Judiciary of Guam if within ninety
17 (90) days of the criminal defendant failing to uphold his or her bail
18 conditions, the criminal defendant is apprehended and in the legal
19 jurisdiction and custody of the Territory of Guam;

20 (c) If a bail bond agency has more than four (4) occurrences of
21 criminal defendants contracted with that bail bond agency failing to
22 uphold bail conditions within a rolling twelve (12) month period, the
23 Director *shall* revoke that bail bond agency’s license subject to appeal
24 pursuant to §79115 of this Chapter, and such agency and their
25 principals *shall* be ineligible for future bail bond agency licenses in
26 whole or in part.

1 (d) Fifty percent (50%) of the amount of bail bond premiums
2 forfeited under Subsection (a) of this Section *shall* be deposited to the
3 Judicial Building Fund. The remaining fifty percent (50%) of such
4 premiums *shall* be deposited in the Police Services Fund.”

5 **Section 6. Uniform Bail Schedule.** The Judicial Council *may* promulgate a
6 Uniform Bail Schedule pursuant to §40.20(c) of Chapter 40, Title 9, Guam Code
7 Annotated, as amended by §2 of this Act. Such schedule *shall* be formulated as a
8 fixed amount for each individual crime, subject to additional conditions as set forth
9 by the Judicial Council including but not limited to offender criminal history and
10 crimes involving multiple parties. Bail established by a bail schedule as set forth in
11 this Section *shall* be effective immediately charged and *may* be posted prior to a
12 magistrate hearing.

13 **Section 7. Contractual Arrangments for Payment of Bail or**
14 **Presentation of Proof of Bonding.** Within ninety (90) days of the enactment of
15 this Act, the Guam Police Department, the Guam Department of Corrections, the
16 Treasurer of Guam, and the Unified Judiciary of Guam *shall* enter into contractual
17 arrangements as necessary to allow for the payment of bail or presentation of proof
18 of bonding by a bail bond agency licensed under 11 GCA Chapter 79 at facilities
19 with detainees.

20 **Section 8. Rules and Regulations.** A *new* Item (7) is hereby *added* to
21 §103104(a) of Chapter 103, Title 11, Guam Code Annotated, to read:

22 “(7) In consultation with the Unified Judiciary of Guam, amend such rules
23 and regulations adopted in 12 GAR Chapter 2, pursuant to this Act, in accordance
24 with the Administrative Adjudication Law as *may* be necessary for the operation
25 and management of Bail Bond Agencies.”

26 **Section 9. Bail Bond Agencies and Bail Bond Agents.** A *new* Chapter 2
27 is hereby *added* to Title 12, Guam Administrative Rules and Regulations, to read:

1 "CHAPTER 2
2 BAIL BOND AGENCIES AND BAIL BOND AGENTS
3

4 Article 1. General.

5 Article 2. Licensing Application and Fees.

6 Article 3. Office Requirements and Licensee's Responsibilities.

7 Article 4. Adjudicative Proceedings.
8

9 ARTICLE 1

10 GENERAL
11

12 § 2101. Organization.

13 § 2102. Definitions.
14

15 **§ 2101. Organization.**

16 The Department administers the Guam bail bond license law, 11 GCA
17 Chapter 79. Submissions and requests for information regarding bail bond
18 agency licenses and bail bond agent *may* be sent in writing to the
19 Department.

20 **§ 2102. Definitions.**

21 Words and terms used in these rules *shall* have the same meaning as
22 each has under 11 GCA Chapter 79 unless otherwise provided in these rules,
23 or the context in which they are used in these rules clearly indicates that they
24 be given some other meaning. Unless the context clearly requires otherwise,
25 the definitions in this Section apply throughout this chapter.

26 (a) 'Affidavit' *means* a written statement made under oath.

1 (b) 'Bail bond' *means* the contract between the defendant, the surety
2 and/or the court to insure the appearance of the accused before the court(s) at
3 such time as the court *may* direct. These bonds *may* require annual renewal.

4 (c) 'Clients' *means* defendants and indemnitors.

5 (d) 'Collateral receipt' *means* an accurate description of the security
6 given to an indemnitor by the receiving agency's agent, in its fiduciary
7 capacity, listing all collateral given as security for a bail bond and held by
8 the agency/agent until the bail bond is exonerated by the court or a forfeiture
9 occurs. The receipt *shall* name the owner of the collateral, the defendant, and
10 the bond number, and specify the terms for redemption of the collateral
11 including any fees charged for storage.

12 (e) 'Corporate surety bail bonds' *means* a bail bond contract that is
13 guaranteed by a domestic, foreign, or alien insurance company which has
14 been qualified to transact surety insurance business in Guam by the Board.

15 (f) 'Escrow fund' *means* that percentage of money obtained from
16 collected premiums paid by the agent to the corporate surety company for
17 the purpose of indemnifying the corporate surety from loss caused by the
18 agent.

19 (g) 'Exonerate' *means* the discharging of the bail bond by the court.

20 (h) 'Indemnity agreement' *means* the contract signed by the
21 indemnitor that states the obligations the indemnitor(s) is/are assuming.

22 (i) 'Letter of demand' *means* any form of notice to the
23 indemnitor/defendant that the collateral placed in trust has come under
24 jeopardy because of a failure to appear or violation of bail.

25 (j) 'Letter of forfeiture' *means* a notice in varied forms, sent to a bail
26 bond agency/branch office, advising the agency/branch office that a
27 defendant who has secured a bail bond with that agency has failed to appear

1 on a given date in a given court. The court has made a demand for the
2 payment of the face amount of the bond by a given date.

3 (k) ‘Principal/defendant’ *means* the accused criminal defendant, for
4 whom a bail bond *may* be obtained.

5 (l) ‘Principal partner’ *means* the partner who is the qualified agent of a
6 bail bond agency and who exercises operational control over the agency.

7 (m) ‘Property bond agent’ *means* a surety that posts security in the
8 form of personal or real estate for compensation to assure the appearance of
9 a defendant.

10 (n) ‘Surety’ as it relates to bail bonds, *means* the depositor/owner of
11 cash if a cash bail bond, the property owner(s) if a property bond, the
12 insurance company if a corporate surety bond, that guarantees performance
13 of the bail bond contract for compensation.

14 (o) ‘Surrender form’ *means* the form used to return to custody a
15 defendant for violation of bond conditions or a letter of forfeiture from a
16 court in accordance to the bail contract.

17
18 **ARTICLE 2**

19 **LICENSING APPLICATION AND FEES**

20
21 §2201. Applying for a Bail Bond Agent License.

22 §2202. Submitting Fingerprint Cards for a Criminal History Background
23 Check.

24 §2203. Applying for a Bail Bond Agency License.

25 §2204. Responsibilities of the Qualified Agent.

26 §2205. Applying for a Bail Bond Agency Branch Office License.

1 §2206. Bail Bond Agency, Branch Office, and Agent License
2 Applications—Conditions.

3 §2207. Renewal and Expiration of Licenses.

4 §2208. Cancellation of Employment.

5 §2209. Inactive Licenses.

6
7 **§ 2201. Applying for a Bail Bond Agent License.**

8 After the applicant meets the requirements of 11 GCA §79105 he/she
9 *shall*:

10 (a) Complete an application for a license on a form provided by the
11 Department.

12 (b) Inform the Department if he/she has an insurance surety license
13 and with what company he/she is affiliated.

14 (c) Pay the applicable fee(s) as listed in 11 GCA §79108.

15 **§ 2202. Submitting Fingerprint Cards for a Criminal History**
16 **Background Check.**

17 (a) Every applicant for a bail bond agent license *shall* have a
18 fingerprint criminal history background check conducted.

19 (b) Applicants *shall* be fingerprinted by Guam Police Department on a
20 fingerprint card provided by the Department and pay any fees required by
21 the Guam Police Department for fingerprinting services.

22 **§ 2203. Applying for a Bail Bond Agency License.**

23 To qualify for a bail bond agency license the applicant *shall*:
24 Complete the requirements of the bail bond agent license and;

25 (a) Submit to the Department proof of work experience as required
26 under 11 GCA §79104. Work related experience *shall* include: Bail bonds,

1 insurance, trust accounts, receiving collateral in a fiduciary capacity, and
2 forms of underwriting.

3 (b) Complete an application for an agency license on a form provided
4 by the Department.

5 (c) Pay the applicable fee(s) as required by 11 GCA §79108.

6 (d) Obtain a bond for the main office as required by 11 GCA
7 §79104(c).

8 (e) The applicant *shall* disclose the surety(s) name, address, the
9 attorney in fact, and whose name the escrow fund is in. If the applicant
10 changes their corporate surety, the applicant *shall* immediately advise the
11 Department.

12 (f) If the applicant provides security in the form of real property, the
13 applicant *shall* advise the Department of the names of the court(s) that have
14 given approval for the placing of property bonds.

15 (g) Sole proprietorships *shall* act as the qualified agent of the agency
16 without the payment of additional license fees.

17 (h) Partnerships or limited partnership applicants *shall* each apply,
18 qualify, and furnish their addresses to the Director. When a license is issued
19 to a partnership, the principal partner *shall* act as the qualified agent of the
20 agency without the payment of additional license fees.

21 (i) Applicants representing a corporation *shall* furnish a copy of the
22 articles of incorporation, and a list of officers and departments and their
23 addresses to the Director. When an agency license is issued to a corporation,
24 the manager, officer, or chief operating officer *shall* act as the qualified
25 agent of the agency without the payment of additional license fees.

1 (j) If the applicant represents a foreign corporation, he/she *shall*
2 furnish a copy of its articles of incorporation, and a list of its officers and
3 departments and their addresses to the Department.

4 **§ 2204. Responsibilities of the Qualified Agent.**

5 (a) The qualified agent *shall* be responsible for all transactions,
6 recordkeeping, and the employees of each office he or she is licensed as the
7 qualified agent.

8 (b) Under 11 GCA §79101, a qualified agent is ‘an owner, sole
9 proprietor, partner, manager, officer, or chief operating officer of a
10 corporation who meets the requirements set forth in this Chapter for
11 obtaining a bail bond agency license.’ The qualified agent essentially serves
12 as ‘manager’ of the bail bond agency, and is responsible for all bail bond
13 transactions conducted by the bail bond agents employed by the agency;

14 (c) Each branch office *must* be managed by a qualified agent. A
15 qualified agent *may* serve as a qualified agent of multiple offices. Although
16 the qualified agent remains ultimately responsible for bail bond, a qualified
17 agent is permitted to delegate managerial functions to licensed bail bond
18 agents. However, a qualified agent *shall* not delegate managerial or
19 supervisory functions to unlicensed staff because such functions necessarily
20 involve participation in the sale or issuance of bail bonds.

21 (d) Allowing unlicensed staff to participate in the sale or issuance of
22 bail bonds could lead to charges of aiding or abetting unlicensed activity in
23 violation of 11 GCA §79113.

24 (e) Any agency going out of business in Guam *shall* continue to be
25 obligated on all outstanding bonds until the Director receives notification
26 that all bonds have been exonerated and the Department has received no
27 complaints from indemnitor about the return of collateral. The Director *may*

1 require an audit of the closing agency at any time upon notification of the
2 closing of the agency.

3 **§ 2205. Applying for a Bail Bond Agency Branch Office License.**

4 A licensed bail bond agency *may* establish a branch office by meeting
5 the following requirements:

- 6 (a) Each branch office *shall* have a licensed qualified agent;
- 7 (b) Complete an application form provided by the Department; and
- 8 (c) Pay the applicable fee(s) as required under 11 GCA §79108.

9 **§ 2206. Bail Bond Agency, Branch Office, and Agent License**
10 **Applications—Conditions.**

11 Any person desiring to obtain a bail bond agency, bail bond branch
12 office, or bail bond agent license *shall* make application on a form
13 prescribed by the Director and pay a fee as prescribed by 11 GCA §79108.

14 **§ 2207 Renewal and expiration of licenses.**

15 (a) Licenses issued to bail bond agents, bail bond agencies, or branch
16 offices, expire one year from the date of issue.

17 (b) Licenses *must* be renewed each year on or before the date of
18 expiration and a renewal fee as prescribed by 11 GCA §79108 *must* be paid.

19 (c) If the application for a license renewal is not received by the
20 Director on or before the renewal date, a penalty fee as prescribed by 11
21 GCA §79108 *shall* be paid. Acceptance by the Director of an application for
22 renewal after the renewal date *shall* not be a waiver of the delinquency.

23 (d) A license *shall* be canceled if an application for a renewal of that
24 license is not received by the Director within one year from the date of
25 expiration. A person *may* obtain a new license by satisfying the procedures
26 and qualifications for licensing.

1 (e) No bail bond agent or bail bond agency *shall* engage in the sale or
2 issuance of bail bonds if their license has expired.

3 (f) When the Director receives verification that a bail bond agent
4 license has expired or has been revoked or suspended, the Director *shall*
5 advise the Unified Judiciary of Guam.

6 **§ 2208. Cancellation of Employment.**

7 (a) A person licensed as a bail bond agent *shall* perform duties and
8 activities as licensed only under the direction and supervision of a licensed
9 qualified agent and as a representative of a bail bond agency.

10 (b) Either the agency or agent *may* cancel this relationship. The
11 agency's qualified agent *must* send a written notice of the cancellation to the
12 Department immediately and include the agent's license held by the agency.
13 Notice of cancellation *shall* be provided by signature of the agency's
14 qualified agent on the surrendered license. The cancellation date *shall* be the
15 postmark date or date the license is hand delivered to the Department. If the
16 license held by the agency cannot be surrendered to the Department because
17 the license has been lost, the qualified agent *shall* complete and submit an
18 affidavit of lost license on a form approved by the Department explaining
19 why the license has been lost and for how long the license has not been on
20 display.

21 **§ 2209. Inactive licenses.**

22 (a) Any license issued under 11 GCA Chapter 79, and not otherwise
23 revoked or suspended *shall* be deemed 'inactive' at any time it is delivered
24 to the Director. Until reissued, the holder of an inactive license *shall* be
25 deemed to be unlicensed.

1 (b) An inactive license *may* be placed in an active status upon
2 completion of an application as provided by the Director and upon
3 compliance with 11 GCA Chapter 79.

4 (c) An inactive license *may* not be renewed. The inactive license will
5 be canceled if not activated by the expiration date. To obtain a new license
6 the person *must* satisfy the procedures and qualifications for initial licensing,
7 including the successful completion of any examination and education
8 requirements.

9 (d) The provisions of 11 GCA Chapter 79 relating to the denial,
10 suspension, and revocation of a license *shall* be applicable to an inactive
11 license as well as an active license, except that when proceedings to suspend
12 or revoke an inactive license have been initiated, the license *shall* remain
13 inactive until the proceedings have been completed.

14 **ARTICLE 3**

15 **OFFICE REQUIREMENTS AND LICENSEE'S RESPONSIBILITIES.**

16 §2301. Location of License Documents.

17 §2302. Change of Address.

18 §2303. Responsibilities as a Licensee in Addition to the Other Obligations
19 and Responsibilities Outlined in 11 GCA Chapter 79 and 12 GARR Chapter
20 2.

21 §2304. Criminal Complaint or Action.

22 §2305. Bail Bond Agency and Branch Office Required Records.

23 §2306. Bail Bond Agency Audits and Inspections.

24 **§ 2301. Location of License Documents.**

1 Licenses of all bail bond agency and bail bond agents *shall* be kept in
2 the office located at the address appearing on the license.

3 **§ 2302. Change of Address.**

4 The qualified agent of a bail bond agency *shall* notify the Department
5 of any change of location and mailing address of the agency office within
6 ten (10) working days by filing a completed change of address form
7 provided by the Department.

8 **§ 2303. Responsibilities as a Licensee in Addition to the Other**
9 **Obligations and Responsibilities Outlined in 11 GCA Chapter 79 and 12**
10 **GARR Chapter 2.**

11 It is the responsibility of each and every licensee to obtain a copy of
12 and be knowledgeable of and keep current with the rules implementing 11
13 GCA Chapter 79.

14 **§ 2304. Criminal Complaint or Action.**

15 Every licensee *shall* notify in writing, within ten (10) days after
16 service or knowledge thereof, the Department of any criminal complaint,
17 information, indictment, or conviction (including a plea of guilty or nolo
18 contendere) in which the licensee is named as a defendant.

19 **§ 2305. Bail Bond Agency and Branch Office Required Records.**

20 The following requirements and prohibitions apply to all records and
21 documents required to be maintained by 11 GCA Chapter 79, or in these
22 rules:

23 (a) They *shall* be maintained in accordance with generally accepted
24 accounting practices.

25 (b) No person *shall* make any false or misleading statement, or make
26 false or misleading entry, or willfully fail to make any entry required to be
27 maintained or made, in any such record or document.

1 (c) No person *shall* willfully fail to produce any such record or
2 document for inspection by the Department.

3 (d) The minimum records the qualified agent or principal partner of a
4 bail bond agency *shall* be required to keep are:

5 (1) Bank trust account records;

6 (2) Duplicate receipt book or receipt journal;

7 (3) Prenumbered checks;

8 (4) Check register or cash disbursement journal;

9 (5) Validated bank deposit slips;

10 (6) Reconciled bank monthly statement (client liability vs bank
11 statement);

12 (7) All canceled checks;

13 (8) All voided checks;

14 (9) 'Client information' which includes defendant's name,
15 application, dates of transactions, amount received, amount disbursed,
16 current balance, check number, item(s) covered, indemnitor's
17 agreement, and indemnity agreements, premium receipts, collateral
18 receipt(s), letter(s) of forfeiture, letter(s) of demand and affidavit(s),
19 as applicable, and any written information or communication that *may*
20 have influence on the bail bond or collateral placed for the bail bond;

21 (10) A transaction folder or file containing a copy of all
22 agreements, invoices, billings, and related correspondence for each
23 transaction;

24 (11) Records or description of all collaterals, securities, or
25 monetary instruments received or held in the bail bond business
26 transactions;

1 (12) Records of exoneration of all bail bond transactions which
2 include:

3 (i) Court, citation or case number

4 (ii) Date of issuance of the bail

5 (iii) The defendant's name, address and telephone
6 number

7 (iv) Amount of the bond

8 (v) Name of the court

9 (vi) Date of exoneration of the bond.

10 (e) The above records *shall* be maintained for a minimum period of
11 three (3) years.

12 (f) All funds and monetary instruments received by the agency from
13 customers or clients in business transactions *shall* be deposited into the trust
14 account within three (3) working days of receipt.

15 (g) All money spent on behalf of a client *must* be deposited in and
16 disbursed from the agent's collateral trust account, including advances, loans
17 or money from the agency's business account to the collateral trust account
18 to pay expenses.

19 (h) Bail bond agents *must* secure an affidavit from any party who
20 purchases or takes possession of collateral being liquidated. The affidavit
21 *must* state the name, address and telephone number of the party(ies)
22 acquiring the property along with a complete description of the property,
23 serial number or other unique identifying number, and the dollar value of the
24 collateral being liquidated with an explanation of how the dollar value was
25 estimated.

26 (i) If the bail bond agency provides other services to the indemnitor or
27 client, the firm *must* provide full disclosure in writing of the relationship

1 with any persons providing such services, and prior disclosure of fees
2 charged. The written disclosure *must* be maintained in the client's
3 transaction file for a minimum period of three years. For purposes of this
4 Section, 'other services' *shall* mean services unrelated to the issuance and
5 posting of bail.

6 (j) The bail bond agent *must* provide each indemnitor or client a
7 receipt for all personal property. The bail bond agent *shall* keep a duplicate
8 of all receipts. The receipt will include:

9 (1) Date of receipt;

10 (2) Complete description of the property to include serial
11 numbers or other unique identifying numbers;

12 (3) Signature of the bail bond agent; and

13 (4) A file or case number the receipt relates to.

14 (k) The bail bond agent *shall* maintain an individual ledger card to
15 post all bank charges of any nature, including credit card charges. Accrued
16 interest *shall* be posted to the individual ledger card. If bank charges exceed
17 the interest earned, causing the trust account to be lower than client liability,
18 the bail bond agent *shall* immediately deposit funds into the trust account to
19 bring the trust account into balance. For purposes of this Subsection,
20 'immediately' *shall* mean within one (1) banking day after the bail bond
21 agent receives notice that the trust account is lower than client liability. All
22 interest accruing on the trust bank account *must* be withdrawn at least once
23 monthly.

24 **§ 2306. Bail Bond Agency Audits and Inspections.**

25 (a) All records required to be maintained by a qualified agent of a bail
26 bond agency by 11 GCA Chapter 79, or these rules, together with any other
27 business or other types of records of a licensee which *may* be related to the

1 bail bond activity, together with any personal property which *may* be the
2 subject of, or related to, a bail bond business transaction *shall* be subject to
3 inspection and audit at any reasonable time, with or without notice upon
4 demand by the Department, for the purposes of determining compliance or
5 noncompliance with the provisions of 11 GCA Chapter 79, and these rules.

6 (b) If records requested by the Department or auditing agency are not
7 immediately available because they are not physically present upon the
8 premises at the time the demand is made, they *shall* be procured and
9 produced to the Department or auditing as soon as possible, but in any event
10 within twenty-four (24) hours, by the licensee.

11 (c) A reasonable time for the conduct of such inspection and audit
12 *shall* be:

13 (1) If the records or items to be inspected or audited are located
14 anywhere upon a premise any portion of which is open for business or
15 to the public (or members and guests), then at any time the premises
16 are so open, or at which they are usually open; or

17 (2) If the records or items to be inspected or audited are not
18 located upon a premise set out in Subsection (a) of this Section, then
19 any time between the hours of 8:00 a.m. and 5:00 p.m. Monday
20 through Friday.

21
22 **ARTICLE 4**
23 **ADJUDICATIVE PROCEEDINGS**
24

- 25 § 2401. Adjudicative Proceeding.
26 § 2402. Records Used in an Adjudicative Proceeding.
27 § 2403. Conducting an Adjudicative Proceeding.

1 § 2404. False or Misleading Advertising.

2 § 2405. Standards of Professional Conduct.

3
4 **§ 2401. Adjudicative Proceeding.**

5 Administrative Adjudicative Law *shall* govern the administration of
6 adjudicative proceedings conducted by request, and/or at the discretion of
7 the Director or Board pursuant to Administrative Adjudicative Law, for the
8 categories of matters set forth below. Adjudicative proceedings will be
9 limited to a determination of one or more of the following issues:

10 (a) Whether an applicant for a license meets the minimum criteria for
11 a license to practice as a, bail bond agency, qualified agent, branch office, or
12 bail bond agent in Guam and the Department proposes to deny the
13 application;

14 (b) Whether a person is in compliance with the terms and conditions
15 of a final order or agreement previously issued by the Department;

16 (c) Whether a license holder requesting renewal has submitted all
17 required information and whether a license holder meets minimum criteria
18 for renewal; and

19 (d) Whether a license holder has been certified by a lending agency
20 and reported to the Department for nonpayment or default on a federally or
21 Guam guaranteed educational loan or service-conditional scholarship.

22 (e) Whether a bail bond agency has more than four (4) occurrences of
23 defendants contracted with that bail bond agency failing to uphold bail
24 conditions within a rolling a twelve (12) month period.

25 **§ 2402. Records Used in an Adjudicative Proceeding.**

26 (a) The preliminary record with respect to an application for an
27 original or renewal license *shall* consist of:

1 (1) The application for the license, renewal, or approval and all
2 associated documents;

3 (2) All documents relied upon by the Department in proposing
4 to deny the license, renewal, or approval; and

5 (3) All correspondence between the applicant for license,
6 renewal, or approval and the Department regarding the application.

7 (b) The preliminary record with respect to determination of
8 compliance with a previously issued final order or agreement *shall* consist
9 of:

10 (1) The previously issued final order or agreement;

11 (2) All reports or other documents submitted by, or at the
12 direction of, the license holder, in full or partial fulfillment of the
13 terms of the final order or agreement;

14 (3) All correspondence between the license holder and the
15 Department regarding compliance with the final order or agreement;
16 and

17 (4) All documents relied upon by the Department showing that
18 the license holder has failed to comply with the previously issued final
19 order or agreement.

20 (c) The preliminary record with respect to the determination of
21 nonpayment or default by the license holder on a federally or state-
22 guaranteed educational loan or service-conditional scholarship *shall* consist
23 of:

24 (1) Certification and report by the lending agency that the
25 identified person is in default or nonpayment on a federally or Guam
26 guaranteed educational loan or service-conditional scholarship; or

1 (2) A written release, if any, issued by the lending agency
2 stating that the identified person is making payment on the loan in
3 accordance with a repayment agreement approved by the lending
4 agency.

5 **§ 2403. Conducting an Adjudicative Proceeding.**

6 (a) Adjudicative proceedings *shall* be conducted by a presiding officer
7 for adjudicative proceedings designated by the Director or Board. The
8 presiding officer for the adjudicative proceedings *shall* not have personally
9 participated in the decision, which resulted in the request for an adjudicative
10 proceeding.

11 (b) The parties or their representatives *may* present written
12 documentation. The presiding officer for the adjudicative proceedings *shall*
13 designate the date by which written documents *must* be submitted by the
14 parties.

15 (c) The presiding officer for adjudicative proceedings *may*, in his or
16 her discretion, entertain oral argument from the parties or their
17 representatives.

18 (d) No witnesses *may* appear to testify.

19 (e) In addition to the record, the presiding officer for the adjudicative
20 proceedings *may* employ Department expertise as a basis for the decision.

21 (f) The presiding officer for the adjudicative proceedings *shall* not
22 issue an oral order. Within ten (10) days of the final date for submission of
23 materials or oral argument, if any, the presiding officer for adjudicative
24 proceedings *shall* enter an initial order.

25 **§ 2404. False or Misleading Advertising.**

26 (a) Every advertisement by a licensee that solicits or advertises
27 business *shall* contain the name of the business exactly as stated on the bail

1 bond agency license, and the physical address of the business as stated on
2 the bail bond agency license, and the bail bond agency license number. A
3 licensed bail bond agency *may* advertise under a registered trade name of the
4 licensee provided that the registered trade name is stated exactly as
5 documented with the Department. Licensees under this Chapter *must* notify
6 the Department in writing, of any registered trade names intended for use in
7 future advertising.

8 (b) Telephone directory listings that are for the purpose of providing
9 the business name, address, and telephone number only, are not required to
10 include the license number.

11 (c) The Department has authority to discipline bail bond agents for
12 advertising that is false, fraudulent or misleading pursuant to 11 GCA
13 §79113.

14 **§ 2405. Standards of Professional Conduct.**

15 (a) A bail bond agent *shall* maintain a detailed record of any collateral
16 taken as security on any bond to the principal, indemnitor, or depositor of
17 such collateral.

18 (b) A bail bond agent *shall* preserve or retain separately any collateral
19 or to retain any collateral taken as security on any bond.

20 (c) A bail bond agent *shall* not have an outstanding judgment on a bail
21 forfeiture, which judgment is or has been subject to execution on demand.

22 (d) A bail bond agent *shall* not use a relationship with any person
23 employed by a jail facility to obtain referrals, or pay a fee or rebate or give
24 or promise anything of value to any person having the power of arrest or
25 having control of federal or local prisoners, trustees or prisoners incarcerated
26 in any jail, prison or any other place used for the incarceration of persons.

1 (e) A bail bond agent *shall* not require as a condition of his/her
2 posting a bail bond that the principal or defendant agree to engage the
3 services of a specific attorney.

4 (f) A bail bond agent *shall* not prepare or issue forged bonds or a
5 forged power of attorney.

6 (g) A bail bond agent *shall* not arrest or make a threat of arrest to a
7 defendant when the defendant or the indemnitor fails to fulfill a promise to
8 repay credit extended by the bail bond agent.

9 (h) A bail bond agent *shall* not pay a fee or rebate or give or promise
10 anything of value to the principal or anyone on his or her behalf.

11 (i) A bail bond agent *shall* not pay a fee or rebate or give anything of
12 value to an attorney in bail bond matters, except for legal services actually
13 rendered on behalf of the bail bond agent.

14 (j) A bail bond agent *shall* not pay a fee or rebate or pay for a referral
15 except from another bonding company, or promise anything of value to a
16 person in order to secure a settlement, compromise, remission or reduction
17 of the amount of any bail bond.”

18 **Section 10. Enactment.** This Act *shall* be effective upon enactment.

19 **Section 11. Severability.** If any provision of this Law or its application to
20 any person or circumstance is found to be invalid, or contrary to law, such
21 invalidity *shall* not affect other provisions or applications of this Law which can be
22 given effect without the invalid provision or application, and to this end the
23 provisions of this Act are severable.