

SENATE BILL No. 473

AN ACT concerning crimes, punishment and criminal procedure; relating to the Kansas code of criminal procedure; authorizing a notice to appear that meets certain requirements to serve as a lawful complaint; requiring a minimum appearance bond premium in district court; providing reasons for suspending or terminating authorization of a compensated surety; authorizing the chief judge of a judicial district to require a compensated surety to submit to a state and national criminal history record check; amending K.S.A. 22-2202, 22-2408 and 22-2809b and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-2202 is hereby amended to read as follows: 22-2202. *Subject to K.S.A. 22-2201, and amendments thereto, as used in this code:*

(a) "Absconds from supervision" means knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising court services officer or community correctional services officer.

(b) "Appellate court" means the supreme court or court of appeals, depending on the context in which the term is used and the respective jurisdiction of those courts over appeals in criminal cases, as provided in K.S.A. 22-3601, and amendments thereto.

(c) "Appearance bond" means an agreement, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement.

(d) "Arraignment" means the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty.

(e) "Arrest" means the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of a notice to appear is not an arrest.

(f) "Bail" means the security given for the purpose of insuring compliance with the terms of an appearance bond.

(g) "Bind over" means require a defendant to appear and answer before a district judge having jurisdiction to try the defendant for the felony with which the defendant is charged.

(h) "Charge" means a written statement presented to a court accusing a person of the commission of a crime and includes a complaint, information or indictment.

(i) "Complaint" means a written statement under oath of the essential facts constituting a crime, except that *the following shall be deemed a valid complaint if signed by the law enforcement officer:*

(1) A citation or notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106, and amendments thereto, ~~or~~;

(2) a citation or notice to appear issued pursuant to and in compliance with K.S.A. 32-1049, and amendments thereto, ~~shall be deemed a valid complaint if it is signed by the law enforcement officer;~~
or

(3) a notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 22-2408, and amendments thereto, for any unclassified misdemeanor or nonperson misdemeanor if:

(A) There is a memorandum of agreement between the law enforcement agency that employs such officer and the county or district attorney in the jurisdiction where the notice to appear is issued; and

(B) the notice to appear complies with the requirements of the memorandum of agreement and K.S.A. 22-3201(b), and amendments thereto.

(j) "Custody" means the restraint of a person pursuant to an arrest

or the order of a court or magistrate.

(k) "Detention" means the temporary restraint of a person by a law enforcement officer.

(l) "Indictment" means a written statement, presented by a grand jury to a court, ~~which~~ *that* charges the commission of a crime.

(m) "Information" means a verified written statement signed by a county attorney or other authorized representative of the state of Kansas, presented to a court, ~~which~~ *that* charges the commission of a crime. An information verified upon information and belief by the county attorney or other authorized representative of the state of Kansas shall be sufficient.

(n) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, community corrections officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.

(o) "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes justices of the supreme court, judges of the court of appeals and judges of district courts.

(p) "Notice to appear" means a written request, issued by a law enforcement officer, that a person appear before a designated court at a stated time and place.

(q) "Preliminary examination" means a hearing before a magistrate on a complaint or information to determine if a felony has been committed and if there is probable cause to believe that the person charged committed such felony.

(r) "Prosecuting attorney" means any attorney who is authorized by law to appear for and on behalf of the state of Kansas in a criminal case, and includes the attorney general, an assistant attorney general, the county or district attorney, an assistant county or district attorney and any special prosecutor whose appearance is approved by the court. In the case of prosecution for violation of a city ordinance, "prosecuting attorney" means the city attorney or any assistant city attorney.

(s) "Search warrant" means a written order made by a magistrate directed to a law enforcement officer commanding the officer to search the premises described in the search warrant and to seize property described or identified in the search warrant.

(t) "Summons" means a written order issued by a magistrate directing that a person appear before a designated court at a stated time and place and answer to a charge pending against the person.

(u) "Warrant" means a written order made by a magistrate directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

Sec. 2. K.S.A. 22-2408 is hereby amended to read as follows: 22-2408. ~~(1)(a)~~ Except as otherwise provided in subsection ~~(6)~~ of ~~this section~~ (f), whenever a law enforcement officer detains any person without a warrant, for any act punishable as a misdemeanor, and such person is not immediately taken before a magistrate for further proceedings, the officer may serve upon such person a written notice to appear in court. Such notice to appear shall contain the name and address of the person detained, the crime charged, and the time and place when and where such person shall appear in court.

~~(2)(b)~~ The time specified in such notice to appear must be at least

seven days after such notice is given unless the person shall demand an earlier hearing.

~~(3)~~(c) The place specified in such notice to appear must be before some court within the county in which the crime is alleged to have been committed which has jurisdiction of such crime.

~~(4)~~(d) The person detained, in order to secure release as provided in this section, must give his or her written promise to appear in the court by signing the written notice prepared by the officer. The original of the notice shall be retained by the officer; a copy delivered to the person detained, and the officer shall forthwith release the person.

~~(5)~~(e) (1) *Except as provided in paragraph (2)*, such law enforcement officer shall cause to be filed, without unnecessary delay, a complaint in the court in which a person released under subsection ~~(4)~~ (d) is given notice to appear, charging the crime stated in ~~said~~ such notice.

(2) *The provisions of paragraph (1) shall not apply if the notice to appear is a valid complaint pursuant to K.S.A. 22-2202, and amendments thereto.*

(3) If the person released fails to appear as required in the notice to appear, a warrant shall be issued for his or her arrest.

~~(6)~~(f) The procedures prescribed by this section shall not apply to the detention or arrest of any person for the violation of any law regulating traffic on the highways of this state, and the provisions of K.S.A. 8-2104 through 8-2108, and amendments thereto, and the code of procedure for municipal courts shall govern such procedures.

Sec. 3. K.S.A. 22-2809b is hereby amended to read as follows: 22-2809b. (a) As used in this section:

(1) "Compensated surety" means any person who or entity that is organized under the laws of the state of Kansas that, as surety, issues appearance bonds for compensation, *posts bail for four or more persons in a calendar year*; is responsible for any forfeiture and is liable for appearance bonds written by such person's or entity's authorized agents. A "compensated surety" is either an insurance agent surety ~~or~~, a property surety *or a bail agent*.

(2) "Insurance agent surety" means a compensated surety licensed by the insurance commissioner to issue surety bonds or appearance bonds in this state and who represents an authorized insurance company. An "insurance agent surety" may have other insurance agent sureties working with or for such surety.

(3) "Property surety" means a compensated surety who secures appearance bonds by property pledged as security. A "property surety" may be a person or entity, ~~other than a corporation~~, and may authorize bail agents to act on behalf of the "property surety" in writing appearance bonds.

(4) "Bail agent" means a person authorized by a compensated surety to execute surety bail bonds on such surety's behalf.

(5) *"Appearance bond premium" means the fee charged by a compensated surety for posting an appearance bond.*

(b) Every compensated surety shall submit an application to the chief judge of the judicial district, or the chief judge's designee, in each judicial district where such surety seeks to act as a surety. A compensated surety shall not act as a surety in such judicial district prior to approval of such application.

(1) The application shall include, but is not limited to, the following information for each insurance agent surety, property surety or bail agent:

(A) A copy of the applicant's Kansas driver's license or nondriver's identification card;

(B) a statement, made under penalty of perjury, that the applicant

is a resident of this state and is not prohibited by K.S.A. 22-2809a(c), and amendments thereto, from acting as a surety; *and*

(C) a certificate of continuing education compliance in accordance with subsection ~~(f)~~ (g).

(2) The application for each insurance agent surety also shall include:

(A) A copy of the qualifying power of attorney certificates issued to such surety by any insurance company;

(B) a current and valid certificate of license from the insurance department; and

(C) a current and valid certificate of authority from the insurance department.

(3) The application for each property surety also shall include:

(A) A list of all bail agents authorized by such property surety to write appearance bonds on such property surety's behalf and all documentation from such bail agents demonstrating compliance with subsection (b)(1); and

(B) an affidavit describing the property by which such property surety proposes to justify its obligations and the encumbrances thereon, and all such surety's other liabilities. The description shall include a valuation of the property described therein. If the valuation is not readily evident, an appraisal of the property may be required and, if required, shall be incorporated into the affidavit.

(4) The chief judge of the judicial district may require, as a qualification for initial or continued authorization in the judicial district, a compensated surety to submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or any other jurisdiction. The chief judge or the chief judge's designee is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The chief judge or the chief judge's designee may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the individual and for making an official determination of the qualifications for authorization in the judicial district. Disclosure or use of any information received by the chief judge or the chief judge's designee for any purpose other than the purposes provided for in this paragraph shall be a class A nonperson misdemeanor. The Kansas bureau of investigation may charge a reasonable fee for conducting a criminal history record check, and the individual seeking initial or continued authorization under this section shall pay the costs of fingerprinting and the state and national criminal history record check.

(c) A property surety authorized to act as a surety in a judicial district pursuant to subsection (b) shall be allowed outstanding appearance bonds *in the state of Kansas* not to exceed an aggregate amount ~~which~~ *that* is 15 times the valuation of the property described in subsection (b)(3). Such property surety shall not write any single appearance bond that exceeds 35% of the total valuation of the property described in subsection (b)(3).

(d) *(1) A compensated surety shall:*

(A) Charge a minimum appearance bond premium of 10% of the face amount of the appearance bond;

(B) only post a bond after the compensated surety has received at least 1/2 of the required minimum appearance bond premium in one of the following forms:

(i) Currency of the United States paid to the compensated surety prior to the execution of an appearance bond;

(ii) a check delivered to a compensated surety that shall be properly payable when delivered and promptly deposited in the compensated surety's bank account;

(iii) a credit or debit card transaction if the compensated surety obtains authorization from the card issuer for the amount due and an approval number from the card issuer; or

(iv) a bank or wire transfer or other electronic funds transfer including, but not limited to, peer-to-peer transfer, if such transfer occurs prior to the execution of the appearance bond; and

(C) be physically present when the bond is posted and sign the bond at the jail.

(2) A compensated surety shall enter into a premium financing agreement for any unpaid minimum appearance bond premium amount.

(e) (1) Each judicial district may, by local rule, require additional information from any compensated surety and establish what property is acceptable for bonding purposes under subsection (b)(3).

(2) A judicial district shall not require any compensated surety to apply for authorization in such judicial district more than once per year, but may require additional reporting from any compensated surety in its discretion. If the judicial district does not require an annual application, each compensated surety or bail agent shall provide a certificate of continuing education compliance in accordance with subsection ~~(f)~~ (g) to the judicial district each year.

(3) A judicial district shall not decline authorization for a compensated surety solely on the basis of type of compensated surety.

~~(e)~~(f) (1) Nothing in this section shall be construed to require the chief judge of the judicial district, or the chief judge's designee, to authorize any compensated surety to act as a surety in such judicial district if the judge or designee finds, in such person's discretion, that such authorization is not warranted.

(2) (A) If such authorization is granted, the chief judge of the judicial district, or the chief judge's designee, may terminate or suspend the authorization at any time. *Reasons for terminating or suspending such authorization include, but are not limited to:*

(i) *Filing false statements with the court;*

(ii) *failing to charge the minimum appearance bond premium as required by this section;*

(iii) *paying a fee or rebate or giving or promising anything of value to a jailer, law enforcement officer, any person who has the power to arrest or hold a person in custody or any public official or employee in order to secure a settlement, compromise, remission or reduction of the amount of any appearance bond, forfeiture or estreatment, or to secure or delay an appearance bond;*

(iv) *paying a fee or rebate or giving or promising anything of value, other than reward payments for information relating to the apprehension of fugitives, to an inmate in exchange for a business referral;*

(v) *requiring or accepting anything of value from a principal other than the appearance bond premium, except that the compensated surety may accept collateral security or other indemnity to secure the face amount of the bond;*

(vi) *intentionally failing to promptly return collateral security to the principal when the principal is entitled to return of such security;*

(vii) *knowingly employing or otherwise compensating for any appearance bond related work, any person who has been convicted of a felony unless such conviction has been expunged, other than reward payments for information relating to the apprehension of fugitives; or*

(viii) *failing to pay any forfeiture judgment within 30 days of the*

filing of the journal entry of judgment.

(B) The judge or the judge's designee may investigate claims of violations described in subparagraph (A). If the chief judge makes a finding that a violation has occurred, the chief judge may suspend or terminate the authorization of the compensated surety.

~~(A)~~(C) If the authorization is suspended for 30 days or more, the chief judge or designee shall make a record describing the length of the suspension and the underlying cause and provide such record to the surety. Such surety, upon request, shall be entitled to a hearing within 30 days after the suspension is ordered.

~~(B)~~(D) If the authorization is terminated, the chief judge or designee shall make a record describing the underlying cause and provide such record to the surety. Such surety, upon request, shall be entitled to a hearing within 30 days after the termination is ordered.

(3) If an authorized compensated surety does not comply with the continuing education requirements in subsection ~~(f)~~ (g), the chief judge of the judicial district, or the chief judge's designee, may allow a conditional authorization to continue acting as a surety for 90 days. If such compensated surety does not comply with the continuing education requirements in subsection ~~(f)~~ (g) within 90 days, such conditional authorization shall be terminated and such compensated surety shall not act as a surety in such judicial district.

~~(f)~~(g) (1) Every compensated surety shall obtain at least eight hours of continuing education credits during each 12-month period beginning on January 1, 2017.

(2) The Kansas bail agents association shall either provide or contract for a minimum of eight hours of continuing education classes to be held at least once annually in each congressional district and may provide additional classes in its discretion. The chief judge in each judicial district may provide a list of topics to be covered during the continuing education classes. A schedule of such classes shall be publicly available. The association shall not charge more than ~~\$250~~ \$300 annually for the eight hours of continuing education classes, and the cost of any class with less than eight hours of continuing education shall may be prorated accordingly. Any fee charged for attending continuing education classes shall not be increased or decreased based upon a compensated surety's membership or lack of membership in the association.

(3) Upon completion of at least eight hours of continuing education credits during each 12-month period by a compensated surety, the Kansas bail agents association shall issue a certificate of continuing education compliance to such surety. The certificate shall be prepared and delivered to the compensated surety within 30 days of such surety's completion of the continuing education requirements. The certificate shall show in detail the dates and hours of each course attended, along with the signature of the Kansas bail agents association official attesting that all continuing education requirements have been completed.

(4) Any continuing education credits used to comply with conditional authorization pursuant to subsection ~~(e)(3)~~ (f)(3) shall not be applied towards compliance in the current 12-month period or any subsequent 12-month period.

~~(5) A person operating as a sufficient surety or bail bondsman in the state immediately prior to the effective date of this act shall be deemed to be compensated surety under this act and shall be exempt from the continuing education requirements for a conditional authorization pursuant to this section until July 1, 2017.~~

Sec. 4. K.S.A. 22-2202, 22-2408 and 22-2809b are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.