

Sureties—Applications; Authorization; Continuing Education; Bail Enforcement Agents—Licensing; Regulation; Senate Sub. for HB 2056

Senate Sub. for HB 2056 creates and amends law relating to sureties and bail enforcement agents.

The bill adds new sections requiring compensated sureties to submit an application to the chief judge of the judicial district in each judicial district where such surety seeks to act as a surety and prohibiting any compensated sureties from acting as a surety prior to approval of such application. “Compensated surety” is defined as any person who or entity organized under Kansas law that, as surety, issues bonds for compensation, is responsible for any forfeiture, and is liable for appearance bonds written by such person’s authorized agents. A “compensated surety” is either an insurance surety or a property surety, which the bill also defines.

The bill outlines the required contents of applications for insurance agency sureties, property surety, or bail agent, and allows each judicial district, by local rules, to require additional information from any compensated surety and establish what property is acceptable for bonding purposes. Judicial districts are prohibited from requiring a compensated surety to apply for authorization in such judicial district more than once a year, but may require additional reporting from a compensated surety in its discretion. Further, the bill prohibits a judicial district from declining authorization for a compensated surety based solely on the type of compensated surety. The bill states its provisions shall not be construed to require the chief judge of the judicial district to authorize any compensated surety to act as a surety in such judicial district if the judge finds, in such person’s discretion, that such authorization is unwarranted.

If authorization is granted, the bill allows the chief judge to suspend or terminate the authorization at any time. If the authorization is suspended for 30 or more days, the bill requires the judge to make a record describing the length of the suspension and the underlying cause and provide the record to the surety. Upon request, the surety is entitled to a hearing within 30 days after the suspension is ordered. If the authorization is terminated, the bill requires the judge to make a record describing the underlying cause and provide such record to the surety. Upon request, the surety is entitled to a hearing within 30 days after the termination is ordered.

Among other required documents, the application for each property surety is required to include an affidavit describing the property by which such surety proposes to justify its obligations, the encumbrances thereon, a valuation of such property, and all such surety’s other liabilities. A property surety authorized to act as a surety in a judicial district is allowed outstanding appearance bonds not to exceed an aggregate amount that is 15 times the valuation of the property identified in the surety’s application. Additionally, the bill prohibits such surety from writing any single appearance bond that exceeds 35 percent of the total valuation of such property.

Given the new distinction between compensated and uncompensated sureties, the bill amends law to specify language requiring each surety to justify by affidavit the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all of the surety’s other liabilities shall apply only to uncompensated sureties.

Beginning on January 1, 2017, the bill requires each compensated surety to obtain at least 8 hours of continuing education credits each 12-month period. The chief judge in each

judicial district may provide a list of topics to be covered during the continuing education classes. If the judicial district does not require an annual application, the bill requires each compensated surety or bail agent to provide a certificate of continuing education compliance to the judicial district each year.

If an authorized compensated surety does not comply with these requirements, the chief judge of the judicial district may allow a conditional authorization to continue acting as a surety for 90 days. If the compensated surety does not obtain the required 8 hours within 90 days, the conditional authorization shall be terminated and the compensated surety will be prohibited from acting as a surety in that judicial district. Continuing education credits used to comply with conditional authorization shall not be applied toward compliance with the current or any subsequent 12-month period. Existing sureties as of the effective date of the act are exempt from the continuing education requirements for a conditional authorization until July 1, 2017.

The bill requires the Kansas Bail Agents Association (KBAA) to provide or contract for a minimum of 8 hours of continuing education classes at a cost of no more than \$250 for 8 hours of continuing education classes to be held at least once annually in each congressional district. The KBAA may provide additional classes in its discretion and the cost of any class less than 8 hours shall be prorated. The bill prohibits fees charged for attending continuing education classes to be increased or decreased based upon whether a compensated surety is a member of the KBAA.

Upon completion of at least 8 hours of continuing education credits during a 12-month period, the bill requires the KBAA to issue to the surety that completed the credits a certificate of continuing compliance, which must be prepared and delivered to the surety within 30 days of completion and must detail the dates and hours of each course attended, along with the signature of the KBAA official attesting that all continuing education requirements have been completed.

The bill creates a new definitions section containing definitions of “surety,” “bail agent,” and “bail enforcement agent.”

The bill declares it unlawful for any person to engage in the business of a bail enforcement agent without being licensed. An authorized surety or bail agent attempting to enforce a bail bond is not to be deemed to be engaging in the business of a bail enforcement agent.

The Attorney General is given exclusive jurisdiction and control of the licensing and regulation of bail enforcement agents, and cities are prohibited from adopting any ordinance in this regard. Any existing ordinance is declared null and void. The Attorney General is given authority to adopt rules and regulations to carry out the new provisions.

Any applicant for a license is required to submit to the Attorney General an application and fee determined by the Attorney General, not to exceed \$200. The application must be verified under penalty of perjury and include:

- Full name and business address;
- Two photographs of the applicant;

- A set of fingerprints to be submitted for a Federal Bureau of Investigation criminal history record check; and
- Employment history and criminal history.

The bill authorizes the Attorney General to conduct a state and national criminal history records check and to use information from this check to determine eligibility for a license. The Attorney General may charge a fee to cover the cost of the background check.

The Attorney General is allowed to deny, censure, limit, condition, suspend, or revoke a license for various reasons, including false statements or information given in connection with an application for a license; violation of the licensing provisions or of statutory requirements for out-of-state sureties and prohibitions on felons acting as sureties; a felony conviction; conviction within ten preceding years of a person misdemeanor, unless expunged; becoming subject to a domestic protection order; becoming subject to the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, or similar proceedings in other jurisdictions; commission of an act (on or after July 1, 2016) while unlicensed for which a license is required (grounds for denial of license only); commission of an act (on or after July 1, 2016) that would permit the Attorney General to take some other action with regard to the license or application; commission of an act with an expired license that would be grounds for suspension, revocation, or denial of a license; or becoming subject to any proceeding that could render the licensee subject to discipline under the bill's provisions. All such actions by the Attorney General shall be pursuant to the Kansas Administrative Procedure Act.

The Attorney General is permitted to charge a fee, not to exceed \$15, for application forms and materials that would be credited against the application fee.

The bill authorizes the Attorney General to determine the form of the license, and the license must include the name of the licensee and a license number and date. The licensee must post the license in a conspicuous place in the licensee's principal place of business and shall be provided with a pocket card reflecting the license. The licensee must surrender the card within five days of terminating activities or the suspension or revocation of the license. A licensee must notify the Attorney General of a change of address within 30 days.

Licenses shall expire every two years and may be renewed at that time, in the same manner as obtaining an original license (including a fee of up to \$175), except the applicant is required only to update information shown on the original application or any previous renewal and provide a new photograph and fingerprints only if the photograph and fingerprints on file have been on file for more than four years. The Attorney General may require additional information by rules and regulations.

The Attorney General is given the authority to fix the application, licensing, and renewal fees annually, pursuant to the limits described above. A duplicate license may be issued for a fee of \$5 if the original license was lost.

All fees or charges received pursuant to the new provisions shall be deposited in the state treasury to the credit of the Bail Enforcement Agents Fee Fund, which is created by the bill. Moneys in the Fund shall be used solely for administering and implementing the new

provisions of the bill and any other law relating to the licensure and regulation of bail enforcement agents.

The unlicensed conduct as a bail enforcement agent prohibited by the bill's provisions and by other statutory provisions regarding out-of-state sureties and prohibiting felons from serving as sureties are made an unconscionable act or practice under the Kansas Consumer Protection Act, and the Attorney General is given exclusive jurisdiction to bring an action alleging a violation of such act.

Expungement statutes are amended to require expunged convictions to be disclosed and to allow them to be considered for the purposes of determining qualifications for a bail enforcement agent license. [*Note:* The bill appears to extend the sunset date for the Judicial Branch surcharge from 2015 to 2017. This extension is in previously existing law and is included in this bill to reconcile conflicting versions of the statute.]

A statute defining and governing sureties and agents of a surety is amended to reflect the new provisions, including removing the term "agent of a surety" and its definitions and replacing that with the terms "bail agent" and "bail enforcement agent" and their definitions. A bail enforcement agent is required to be licensed pursuant to the new provisions. A restriction on acting as a surety or agent with a felony conviction is amended to remove the restriction if the conviction has been expunged. Requirements for out-of-state sureties and agents are updated to reflect the new provisions.