Approved
Date: 3/6/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:35 a.m. on March 5, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Michael George, Legal Counsel, Juvenile Justice Authority (JJA)
Judge Thomas Graber, 31st Judicial District Court, Wellington, Kansas
Senator Ed Pugh
W.R. Kenney, Kansas Association of Bail Bondsmen (KABB)
Jerry Watson, American Bail Coalition (ABC)
Manual Baraban, Kansas Association of Professional Assurities
Shane Rolf, Shane's Bail Bonds
Paul Forbes, Bail Bondsman

Others attending: see attached list

The minutes of the February 26th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator O'Connor. Carried.

SB 563–juvenile offenders; custody of commissioner of juvenile justice

Conferee George testified in support of **SB 563**, a bill which he stated would amend the Kansas Juvenile Justice Code to provide a "time-certain" for the termination of the JJA's custody of juvenile offenders. He reviewed how the current system operates and discussed the purpose of this bill's provisions(attachment 1) He further discussed an amendment which would allow for release of certain juvenile offenders from under JJA's authority after 90 days.(attachment 2)

Conferee Graber testified in opposition to **SB 563**. He discussed the bill and his opposition to it in its current form stating that three months is not adequate time to assure that the juvenile offender will remain in the home and he offered an amendment which expands the time to six months. He stated that he was supportive of the bill with this amendment. On inquiry by the Chair regarding the need for this bill he stated it was not necessary.(attachment 3)

SB 599–conditions of release; sureties

Senator Pugh testified in support of **SB 599**, a bill which he introduced. He explained the bill and discussed it's purpose.(no attachment)

Conferee Watson testified in support of **SB 599**, a bill which would create a list of requirements that a surety must meet before he could be approved as a bail bondsman. He discussed how the bail bond system works and elaborated on the financial requirements and regular monitoring imposed by statute on insurance company bail underwriters. He defined non-insurance bail bondsmen as "pocket bondsmen" and discussed why these types of underwriters are increasingly unable to keep their financial promise to their clients. He further discussed how **SB 599** would remedy this.(attachment 4)

Conferee Kenney testified in opposition to **SB 599**. He stated that he was unaware of any problem with the property surety business in Kansas. He described the process a property surety must go through to become authorized to write bonds for the court, explained why the bill is not necessary and why it would, as currently written, put property surety businesses at risk and out of the business in the future.(attachment 5)

Conferee Baraban testified in opposition to **SB 599**. He discussed the current regulatory requirements of independent bail bondsmen and further discussed why he felt this bill was a "one-sided insurance oriented bill designed to eliminate property bail bondsmen." Attached to his testimony is a copy of a "fair" statute from Missouri State law.(attachment 6)

Conferee Rolf testified in opposition to **SB 599**. He discussed why he disagreed with Conferee Watson and proposed an alternative statute to "make the bill agreeable and address differences."(attachment 7)

Conferee Forbes testified in opposition to **SB 599**. He briefly discussed his experience as a bail bondsman and stated that on February 28th the Kansas Bail Agents Association was formed in an effort to "get sureties and property bail bondsmen together for the purpose of education, training, and representation on matters such as these and on how to better serve Kansans."(no attachment)

The meeting adjourned at 10:33 a.m. The next meeting is March 6, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-5-02

NAME	REPRESENTING
Randall J Kahler	Manrider Surety Co
Doug Smith	Professional Sureties
Bill Warfield	W.R. Henning Bail Bonds
Mark Gleeson	Kansas Judicial Branch
Kathy Porter	Judicial Branch
Jerry Sloan	Judicial
Paul A. Forbes	Kansas Bail Agents Association Incorporated
Bill Brady	Ks Gov't Consulting
Tom Whitaker	Ks Motor Carriers Assn
Jean Barbee	KADC
Kate Hays	intern
Daryl Graf	Ks Bankers Assoc Trust Division
Joe Herold	KSC
Brenda Harmon	KSC
Jack Jones	KSC
Whitney Damron	Ks Bar Assn.
Paul Davis	KBA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-5-02

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Randy M. Hearrell	Kansas Judicial Council
[illegible]	" " "
SHANE ROLF	SHANE'S BAIL BONDS
Bill Kenney	Ks Alliance of Pro Surety
Sheila J. Walker	KDOR-DMV
[illegible]	KDOR - DMV
Sandy Jacquot	LKM
Sonya Allen	Office of State Bank Commissioner
Mike Taylor	City of Wichita
[illegible]	American BAIL Bond
[illegible]	American Surety Bail Bond
David Stuckman	" " -
Brenda Koenig	Barb's Bail Bonds - Hutchinson, Ks
[illegible] Smith	Barb's Bail Bonds - Hutchinson, Ks
Erik Sartorius	City of Overland Park
[illegible]	Kearney Law
Bill Henry	Ks Credit Union Assn
[illegible]	Manuel Bail Co

Senate Judiciary Committee
March 5, 2002

Commissioner Albert Murray
Kansas Juvenile Justice Authority

The Kansas Juvenile Justice Authority supports Senate Bill 563, which amends K.S.A. 38-1664 to provide a time-certain for the termination of the Juvenile Justice Authority's custody of juvenile offenders.

K.S.A. 38-1664 provides that prior to placing a juvenile offender in the custody of the Commissioner of the Juvenile Justice Authority the court must make certain determinations, including:

1) reasonable efforts have been made to maintain the family and prevent unnecessary removal from home; and
2) continuation of residence in the home would be contrary to the welfare of the child or placement outside the home is in the best interests of the juvenile offender.

After a juvenile offender is placed in the custody of the Commissioner, the Juvenile Justice Authority makes a determination as to placement such as a youth residential facility or family foster care, and notifies the court of the placement decision. K.S.A. 38-1664(b).

While a juvenile is in the custody of the Commissioner, the Authority must report to the court at least every six months as to the current placement of the juvenile and the progress of permanency planning. K.S.A. 38-1664(c). If the Authority returns the juvenile to the home, the Authority must notify the court of the return. K.S.A. 38-1664(b). The bill, as written, would clarify that once the juvenile is returned to the home, the Authority's legal custody ends.

Currently, a juvenile offender can be returned to the home but legal custody of the child remains with the Juvenile Justice Authority indefinitely. The Juvenile Justice Authority remains financially responsible for the offender but has no real means of monitoring or controlling the juvenile. These juveniles may remain in this status for years – even after they turn eighteen. We offer the following example of how the situation arises: a juvenile offender is placed in the legal custody of the Juvenile Justice Authority by the court. The Authority makes the determination that the Juvenile should be placed in a residential treatment program and the juvenile successfully completes the program and

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any other conditions placed on the juvenile. The child is then returned home. Although notice is provided to the court, no further action is taken and the child technically remains in the legal custody of the Commissioner. This population is currently 450-500 juvenile offenders.

Juveniles directly committed to a correctional facility and subsequently on conditional release are not affected by this bill. If a juvenile is directly committed to a correctional facility pursuant to the sentencing matrix, the juvenile receives a determinate sentence and a determinate aftercare period upon being released. Once the juvenile meets the conditions of release and the time period has run, the juvenile superintendent notifies the court and as a matter of law the legal custody of the Commissioner is terminated. K.S.A. 38-1675. This bill would actually bring consistency in the way juveniles in the Commissioner's custody are eventually released from that custody.

We have been working closely with the District Court Judges on this bill and propose an amendment that attempts to address most of the initial concerns the Judges had regarding this bill. The amendment, attached to this testimony, states that legal custody terminates after 90 days. This provides an opportunity for the return home to be reviewed, if needed, prior to the legal custody being terminated.

The Juvenile Justice Authority respectfully requests the Senate Judiciary Committee adopt the proposed amendment and report SB 563 favorably.

AM:LS:bt

SENATE BILL 563/PROPOSED AMENDMENT

38-1664

(b) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan. ***If the juvenile offender is returned home on a trial home placement pursuant to a permanency plan submitted to the court or adopted by the court and if the offender successfully remains in the home for three (3) months, the court shall release the offender from the custody of the commissioner upon his request. Upon request of the commissioner, the trial home placement may be extended by the court for an additional six (6) months. If the offender is removed from the home anytime after a six (6) month trial home visit, the court must find that returning the offender home would be contrary to the welfare of the offender or that placement is in the best interest of the offender. The court must also find that reasonable efforts either have or have not been made to maintain the family and prevent the unnecessary removal of the offender from his or her home or an emergency exists which threatens the safety of the offender and it is reasonable to make no effort to maintain the offender in the home.***

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SENATE BILL 563

K.S.A. 38-1664

(b) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan. ***If the juvenile offender is returned home on a trial home placement pursuant to the permanency plan submitted to the court or adopted by the court, and if the offender successfully remains in the home for 6 months, the court shall release the offender from the custody of the commissioner upon his request. Upon request of the commissioner the trial home placement may be extended by the court for an additional 6 months. If the offender is removed from the home anytime after a 6 month trial home visit, the court must find that returning the offender home would be contrary to the welfare of the offender or that placement is in the best interest of the offender. The court must also find that reasonable efforts either have or have not been made to maintain the family and prevent the unnecessary removal of the offender from his or her home, or, an emergency exists which threatens the safety of the offender and it is reasonable to make no effort to maintain the offender in the home.***

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SENATE JUDICIARY COMMITTEE
Testimony re: SB 599
Presented by Jerry Watson
on behalf of
American Bail Coalition
March 5, 2002

I am Jerry Watson, and I am appearing today on behalf of the American Bail Coalition.

As a brief background, there are two types of bail bonds accepted by courts in criminal proceedings in this state. The American Bail Coalition is comprised of members who issue bonds in the first group, which is those companies who issue bonds as a licensed surety pursuant to the authority of K.S.A. 40-1102. Our members are licensed insurance companies with licensed insurance agents.

The second way to issue bonds is through non-insurance company bail bonds, commonly referred to as "pocket bonds." Pursuant to Attorney General Opinion 87-11, only a natural person can write such a "pocket bond", and such bonds are issued under the authority of K.S.A. 22-2806. Pursuant to that AG opinion, a company cannot write bonds pursuant to K.S.A. 22-2806.

SB 599, which amends K.S.A. 22-2806, was introduced at the request of the American Bail Coalition. This bill is modeled after legislation passed in Oklahoma, and is similar to legislation in other states. It provides regulatory control for "pocket bail bondsmen", for reasons that I will explain further in my testimony.

There is a growing problem in the Kansas criminal justice system; a problem which, if not soon corrected, will create serious harm not only economically but to the interests of public safety as well.

The problem concerns how persons are being released on bond pending the trial of their case.

More specifically it has to do with who is appearing as surety on those bonds. As I said earlier, a defendant can purchase his bail bond in Kansas from one of two sources: an insurance company or an individual "pocket bondsman."

The way the system works is simple. A bail bond is just a written contract signed by the defendant whereby he makes two promises: (1) to come back to court when directed, or (2) to pay the amount of the bail.

It is usually necessary, however, for a third party (the surety) to execute the bond promising that if the defendant does not meet the financial obligation to pay, the surety will. The defendant pays for this service.

It is easy to see, then, that the system fails if the surety is not qualified to make, and keep, the surety's end of the bargain.

And that is what is happening in Kansas with a number of pocket bondsmen, and it will continue to happen more and more.

Why? Because increasingly pocket bondsmen are allowed to post their bonds while not being able to keep their financial promise in the first place. Simply put, they do not possess the financial wherewithal to be in this high-risk oriented business.

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Consequently they write their bonds, defendants abscond, and the pocket bondsmen, when called upon to pay, are simply unable to perform.

And what happens when these defendants fail to appear? Nothing. The defunct pocket bondsman doesn't have the necessary resources to locate and recover that defendant back into proper custody. Nor would he - he's out of business anyway at this point. And therein lies the seriousness of the problem: an ever-growing number of bail fugitives at large in the community.

We know one thing for certain about these fugitives. Recent massive studies done by the U.S. Justice Department as it tracked thousands of state case pretrial release felons show that these persons are very highly recidivistic.

In other words, they are out there in the neighborhood, nobody is going after them and they are steadily engaged in the commission of new crimes - creating new crime victims.

So, not only is this growing problem creating mounting economic losses for the state, but there is an increasing threat to public safety.

Because of the strong financial requirements imposed by statute upon insurance company bail underwriters, as well as the rigid regular monitoring of them by expert analysts, this "lack of qualification" problem pertains only to the pocket bondsmen.

SB599 cures the problem. It assures that only the bondsman able to keep his promise to pay is allowed to post bail bonds. It does this by insisting that the bondsman maintain, at all times, a deposit decently proportionate to his open bond liability in the county at any given time. The bill requires the pocket bondsmen to make an application to and pay a license fee to the court; to maintain a security deposit with the court; to maintain liability and errors and omissions insurance coverage; and to renew their license every two years.

This does no harm to deserving people, and it protects the state and the public. And, this is not to suggest that there are not responsible and able pocket bondsmen. There are. And they are needed in Kansas. These responsible and qualified business people would no doubt be in favor of SB599. Why would they not?

Finally, please do not write this off as being merely a bail bond industry squabble over customers. The issues go far beyond that - to such things as enhancing respect for the local justice system, preserving the economic interests of the state, and protecting public safety.

I urge your support for SB599.

TESTIMONY OF W. R. KENNEY

SENATE JUDICIARY COMMITTEE

SENATE BILL NO. 599

MARCH 5, 2002

Chairman Vratil and Members of the Senate Judiciary Committee;

Thank you for the opportunity to appear today and present testimony regarding Senate Bill No. 599. My name is W. R. "Bill" Kenney and I own and operate a surety business (bail bond company) in Wichita, Kansas. I have been in the business for over 40 years and can provide the Committee with more history and information about the surety business than time would permit.

I appear today in strong opposition to Senate Bill No. 599 and hope that the Committee rejects the proposals put forth in this measure.

I am not aware of any incident or evidence indicating a problem with the property surety business in Kansas. Currently, District Courts regulate the surety business conducted within their borders by local rule of the Court. For those of you not familiar with a "property surety" let me explain. A property surety applies to the court for the privilege of writing bonds for the court. I must file an affidavit with the court indicating the assets I have as collateral for the bonds I underwrite. A judge reviews my application information and financial condition and grants me authority to write surety bonds based on this information. Additionally, I am required, on an ongoing basis, to provide the court current financial information including my present bond obligations and any change in my financial condition. This is true for each judicial district I am authorized to write bonds.

Within each judicial district judges are infinitely familiar with the companies and individuals that provide bail and appearance bond services. Judges exercise control over the companies and individuals within their authority and oversight. If a surety fails to fulfill their obligations they are subject to suspension by the court of any privileges for writing bonds. As an independent businessman this is incentive enough for me to ensure my compliance with the rules established by the court.

As we all know, our courts are bulging at the seams. Cases continue to be filed, sufficient court staff is not available and financial resources are limited. This bill will create an additional level of bureaucracy and one that our judiciary may not be able to fulfill.

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MANNIES BONDING COMPANY

302 East Santa Fe • Olathe • Kansas • 66061

To: **Members of the Senate Judiciary Committee**

From: **Manauel Baraban**

Date: **March 5, 2002**

RE: **Senate Bill No. 599**

Mr. Chairman and Members of the Committee:

I appear before you today in opposition to Senate Bill No. 599. I am a property bondsman and have been in the business for 34 years. This bill will virtually eliminate property bondsman in the State of Kansas.

Currently, in order to write bonds as a property surety I must apply with the District Court under K.S.A. 22-2806, Supreme Court Rule 107 and 114 and any other local rules adopted by the Court. In addition to any application, I must submit a sworn financial statement with documentation that substantiates the financial information presented to the court. In the sworn financial statement, I am required to list all assets owned which the Court can levy against should I not pay any financial judgements directed by the Court. Should I file a false statement or supply incomplete, inaccurate or incorrect information with the Court, I would be in very serious legal trouble. I am also required to update my financial information monthly. Failure to do so can result in the immediate suspension as a property bondsman. In fact, if I violate any rule of the court relating to my authorization to write bonds my authority can be suspended and rightly so. It is important to note the court has full disclosure of the assets of a property surety before a property surety is authorized by the court to begin writing bonds.

As you can see the Courts are properly supervising property sureties and this legislation is unnecessary.

Should this proposed legislation be enacted, I have estimated, in my particular instance my business would be required to place on deposit with those courts that I am authorized to do business, more than $760,000 in fees and cash.

I have been in the property surety business enough years to witness insurance companies enter and exit the surety business. I am aware of instances where insurance companies do not meet their financial obligations on unpaid bonds and owe courts money.

It seems to me that any law relating to bail bonds should also apply to agents that write these bonds for insurance companies. Maybe it would be best to look at the entire industry, insurance companies, private independent businesses and even the courts to determine the proper course to take on this issue.

Thank you for your allowing me this opportunity to offer testimony in opposition to Senate Bill No. 599.

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been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the twenty-day period. If the committee neither approves or disapproves any order of rulemaking within the twenty-day period, the department may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved, subject to subsequent suspension by the committee. In the event the committee disapproves any order of rulemaking or portion thereof, the committee shall notify the department and the secretary of state.

4. Any rule or portion of a rule promulgated under the authority of sections 374,512 and 374.515 may be suspended by the committee at any time after a hearing conducted thereon. If any rule is suspended by the committee, the secretary of state shall publish in the Missouri Register, as soon as practicable, an order withdrawing the rule.

5. Any person seeking judicial review of any such rule shall be deemed to have exhausted all administrative review procedures. Notwithstanding the provisions of section 1.140, RSMo, the provisions of sections 374.512 and 374.515 are nonseverable and the grant of rulemaking authority is essentially dependent on the review power vested with the committee. If the review power is held unconstitutional or invalid, the grant of rulemaking authority and any rule promulgated under such rulemaking authority shall also be invalid or void.

(L.1991, S.B. No. 352, § A (§ 6, subsecs. 4, 5, 6, 7, 8), eff. July 10, 1991.)

REGULATION OF BAIL BOND AGENTS

374.700. Definitions

As used in sections 374.700 to 374.775, the following terms shall mean:

(1) **"Bail bond agent"**, a surety agent or an agent of a property bail bondsman who is duly licensed under the provisions of sections 374.700 to 374.775, is employed by and is working under the authority of a licensed general bail bond agent;

(2) **"Director"**, the director of the division of insurance;

(3) **"Division"**, the division of insurance of the state of Missouri;

(4) **"General bail bond agent"**, a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

(5) **"Property bail bondsman"**, a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;

(6) **"Surety bail bond agent"**, any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial

proceedings, and who receives or is promised money or other things of value therefor.
(L.1983, S.B. No. 363, p. 691, § 1.)

Historical and Statutory Notes

Title of Act:
An Act to require the division of insurance to license and regulate persons acting as bail bond agents and general bail bond agents, with penalty provisions. L.1983, S.B. No. 363, p. 691.

Library References

Bail ⇐60.
WESTLAW Topic No. 49.
C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

374.705. Division of insurance, powers and duties—fees, how determined

1. The division shall administer and enforce the provisions of sections 374.700 to 374.775, prescribe the duties of its officers and employees with respect to sections 374.700 to 374.775, and promulgate, pursuant to chapter 536, RSMo, such rules and regulations within the scope and purview of the provisions of sections 374.700 to 374.775 as the director considers necessary and proper for the effective administration and interpretation of the provisions of sections 374.700 to 374.775.

2. The director shall set the amount of all fees authorized and required by the provisions of sections 374.700 to 374.775 by rules and regulations promulgated pursuant to chapter 536, RSMo. All such fees shall be set at a level designed to produce revenue which shall not substantially exceed the costs and expense of administering the provisions of sections 374.700 to 374.775.
(L.1983, S.B. No. 363, p. 692, § 2.)

Library References

Bail ⇐60.
WESTLAW Topic No. 49.
C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.710. License required for bail bond agents—exception

1. Except as otherwise provided in sections 374.700 to 374.775, no person or other entity shall practice as a bail bond agent or general bail bond agent, as defined in section 374.700, in Missouri unless and until the division has issued to him a license, to be renewed each year as hereinafter provided, to practice as a bail bond agent or general bail bond agent.

2. Nothing in sections 374.700 to 374.775 shall be construed to prohibit any person from posting or otherwise providing a bail bond in connection with any legal proceeding, provided that such person receives no fee, remuneration or consideration therefor.

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3. Any rule or portion of a rule promulgated may be suspended by the joint committee on administrative rules if after hearing thereon the committee finds that such rule or portion of the rule is beyond or contrary to the statutory authority of the agency which promulgated the rule, or is inconsistent with the legislative intent of the authorizing statute. The general assembly may reinstate such rule by concurrent resolution signed by the governor.
(L.1983, S.B. No. 363, p. 692, § 3.)

Library References

Bail 🔑60.	C.J.S. Bail; Release and Detention Pending
WESTLAW Topic No. 49.	Proceedings §§ 3, 101.

374.715. Application, form, qualifications, fee—monetary assignment required, amount, effective when

Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the division, and shall contain such information as the division requires. Each application shall be accompanied by proof satisfactory to the division that the applicant is a citizen of the United States, is at least twenty-one years of age, and is of good moral character. Each application shall be accompanied by the examination and application fee set by the division. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the division that the applicant, or, if the applicant is a corporation or partnership, that each officer or partner thereof has completed at least two years as a bail bond agent, as defined in sections 374.700 to 374.775, and that the applicant possess liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. The assignment required by this section shall be in the form, and executed in the manner, prescribed by the division.
(L.1983, S.B. No. 363, p. 692, § 4.)

Library References

Bail 🔑60.	C.J.S. Bail; Release and Detention Pending
WESTLAW Topic No. 49.	Proceedings §§ 3, 101.

374.720. Examination notice—form—content—reexamination fee

1. Each applicant for licensure as a general bail bond agent, after complying with this section and the provisions of section 374.715, shall be issued a license by the division unless grounds exist under section 374.755 for denial of a license.

2. Each applicant for examination and licensure as a bail bond agent, after complying with the provisions of section 374.715, shall appear for examination before the division at the time and place specified by the division in a written notice. Such examination may be either written or oral, as the

division determines, and shall be designed to test the applicant's knowledge and expertise in the area of surety bonds in general and the practice of a bail bond agent, as defined in sections 374.700 to 374.775, in particular. Any applicant who fails such examination may, upon reapplication and payment of the reexamination fee set by the division, retake the examination; provided, however, that no applicant may retake the examination more than three times.

(L.1983, S.B. No. 363, p. 693, § 5 (subsecs. 1, 2).)

Library References

Bail ⇐60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.725. Compliance required, for those acting as bail bond agents prior to licensing requirement, when

Any person who, on September 28, 1983, is acting in any capacity which would be classified as practicing as a bail bond agent or general bail bond agent under the provisions of sections 374.700 to 374.775 may continue to act in such capacity without being licensed under sections 374.700 to 374.775 for a period of twelve months from September 28, 1983.

(L.1983, S.B. No. 363, p. 693, § 5 (subsec. 3).)

Library References

Bail ⇐60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.730. License, annual renewal, fee

All licenses issued to bail bond agents and general bail bond agents under the provisions of sections 374.700 to 374.775 shall be renewed annually, which renewal shall be in the form and manner prescribed by the division and shall be accompanied by the renewal fee set by the division.

(L.1983, S.B. No. 363, p. 693, § 5 (subsec. 4).)

Library References

Bail ⇐60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.735. Examination not required, when

The division may, in its discretion, grant a license without requiring an examination to a bail bond agent who has been licensed in another state immediately preceding his applying to the division, if the division is satisfied by proof adduced by the applicant that his qualifications are at least equivalent to the requirements for initial licensure as a bail bond agent in Missouri under the provisions of sections 374.700 to 374.775.

(L.1983, S.B. No. 363, p. 693, § 6 (subsec. 1).)

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Library References

Bail ⚬=60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.740. Nonresident license requirements

Any person applying to be licensed as a nonresident bail bond agent or nonresident general bail bond agent who has been licensed in another state shall devote fifty percent of his working time in the state of Missouri and shall file proof with the director of insurance as to his compliance, and accompany his application with the fee set by the board and, if applying for a nonresident general bail bond agent's license, with a duly executed assignment of twenty-five thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. Failure to comply with this section will result in revocation of the nonresidence license. The assignment required by this section shall be in the form and executed in the manner prescribed by the division. All licenses issued under this section shall be subject to the same renewal requirements set for other licenses issued under sections 374.700 to 374.775.

(L.1983, S.B. No. 363, p. 693, § 6 (subsec. 2).)

Library References

Bail ⚬=60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.750. Refusal to issue or renew license—applicant's right to hearing

The division may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755. The division shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

(L.1983, S.B. No. 363, p. 693, § 7 (subsec. 1).)

Library References

Bail ⚬=60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.755. Complaint by division, procedure—grounds—disciplinary action

1. The division may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 374.700 to 374.775 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to

perform the work of the profession licensed under sections 374.700 to 374.775;

(2) Having entered a plea of guilty or having been found guilty of a felony;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 374.700 to 374.775 or in obtaining permission to take any examination given or required pursuant to sections 374.700 to 374.775;

(4) Obtaining or attempting to obtain any compensation as a member of the profession licensed by sections 374.700 to 374.775 by means of fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession licensed or regulated by sections 374.700 to 374.775;

(6) Violation of, or assisting or enabling any other person to violate, any provision of sections 374.700 to 374.775 or of any lawful rule or regulation promulgated pursuant to sections 374.700 to 374.775;

(7) Transferring a license or permitting another person to use a license of the licensee;

(8) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections 374.700 to 374.775 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) Being finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice the profession licensed or regulated by sections 374.700 to 374.775 who is not currently licensed and eligible to practice under sections 374.700 to 374.775;

(11) Paying a fee or rebate, or giving or promising anything of value, to a jailer, policeman, peace officer, judge or any other person who has the power to arrest or to hold another person in custody, or to any public official or employee, in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof;

(12) Paying a fee or rebate, or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(13) Paying a fee or rebate, or giving or promising anything of value, to the principal or anyone in his behalf;

(14) Participating in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

2. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the causes stated in

subsection 1 of this section have been met, the division may do any or all of the following:

(1) Censure the person involved;

(2) Place the person involved on probation on such terms and conditions as the division deems appropriate for a period not to exceed ten years;

(3) Suspend, for a period not to exceed three years, the license of the person involved;

(4) Revoke the license of the person involved.

(L.1983, S.B. No. 363, p. 693, § 7 (subsecs. 2, 3).)

Library References

Bail ⇨60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.760. Unsatisfied judgments, affidavit filed monthly, form—content

Each general bail bond agent shall file, between the first and the tenth day of each month, sworn affidavits with the division stating that there are no unsatisfied judgments against him. Such affidavits shall be in the form and manner prescribed by the division.

(L.1983, S.B. No. 363, p. 694, § 8.)

Library References

Bail ⇨60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.765. License requirement violation, penalties

1. Any person who practices as a bail bond agent or general bail bond agent, or who purports to be a bail bond agent, or general bail bond agent as defined in section 374.700, without being duly licensed under sections 374.700 to 374.775 is

(1) For the first such offense, guilty of an infraction;

(2) For the second and each subsequent offense, guilty of a class A misdemeanor.

2. Any licensed bail bond agent who knowingly violates the provisions of one or more of subdivisions (3), (4), (10), (11), (12), (13), (14), or (15) of subsection 1 of section 374.755 shall be guilty of a class B misdemeanor.

(L.1983, S.B. No. 363, p. 694, § 9.)

Library References

Bail ⇨60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

374.770. Bond forfeiture, when—exception, defendant incarcerated in United States, procedure—surety's duties—violation of bond, rights and obligations of bondsman

1. If there is a breach of the contract of the bond, the court in which the case is pending shall declare a bond forfeiture, unless the surety upon such bond informs the court that the defendant is incarcerated somewhere within the United States. If forfeiture is not ordered because the defendant is incarcerated somewhere within the United States, the surety is responsible for the return of the defendant. If bond forfeiture is ordered and the surety can subsequently prove the defendant is incarcerated somewhere within the United States, then the bond forfeiture shall be set aside and the surety be responsible for the return of the defendant. When the surety notifies the court of the whereabouts of the defendant, a hold order shall be placed by the court having jurisdiction on the defendant in the state in which the defendant is being held.

2. In all instances in which a bail bond agent or general bail bond agent duly licensed by sections 374.700 to 374.775 has given his bond for bail for any defendant who has absented himself in violation of the condition of such bond, the bail bond agent or general bail bond agent shall have the first opportunity to return such defendant to the proper court. If he is unable to return such defendant, the state of Missouri shall return such defendant to the proper court for prosecution, and all costs incurred by the state in so returning a defendant may be levied against the bail bond agent or general bail bond agent in question.

(L.1983, S.B. No. 363, p. 694, § 10.)

Library References

Bail ⚬=60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

Notes of Decisions

Incarceration 1

1. Incarceration

This section providing that surety is entitled to have bail bond forfeiture set aside if forfeiture is ordered and surety can subsequently prove that defendant is incarcerated would not be read to have additional requirement that incarceration must be as of time of bond forfeiture. State v. Head (App.1991) 804 S.W.2d 833.

Surety was entitled to have bail bond forfeiture set aside, even though neither surety nor defendant appeared at time of hearing, where surety subsequently surrendered defendant to sheriff, and defendant was incarcerated at time of motion to set aside forfeiture. State v. Head (App.1991) 804 S.W.2d 833.

Bail bond agent, whom State claimed had not acted with diligence or had acquiesced or participated in removal of defendant to another jurisdiction, nevertheless was entitled to have bail bond forfeiture set aside, where defendant was incarcerated in federal prison. State v. Cummings (App.1987) 724 S.W.2d 316.

374.775. Bonds of one thousand or less—fee—additional fee—prohibited

When issuing bonds of one thousand dollars or less, licensed bail bond agents or general bail bond agents may charge a minimum premium of fifty

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dollars. In connection with such bonds no bail bond agent, general bail bond agent, or corporation shall charge or receive any additional fee for investigations or services rendered in connection with the execution of the bond. (L.1983, S.B. No. 363, p. 695, § 11.)

Library References

Bail ⚷60.
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101.

Section

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3. If, after such hearing, the director determines that the utilization review agent has engaged in violations of sections 374.500 to 374.515, he shall reduce his findings to writing and shall issue and cause to be served upon the utilization review agent a copy of such findings and an order requiring the utilization review agent to cease and desist from engaging in such violations. The director may also, at his discretion, order:

(1) Payment of a monetary penalty of not more than ten thousand dollars for a violation which occurred if the utilization review agent consciously disregarded sections 374.500 to 374.515 or which occurred with such frequency as to indicate a general business practice; or

(2) Suspension or revocation of the authority to do business in this state as a utilization review agent if the utilization review agent knew that it was in violation of sections 374.500 to 374.515.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.515. Rules and regulations, promulgation

The director may promulgate such rules and regulations necessary to implement the provisions of sections 374.500 to 374.515, pursuant to the provisions of section 374.045 and chapter 536, RSMo.

(Amended by L.1993, S.B. No. 52, § A.)

Historical and Statutory Notes

1993 Legislation

The 1993 amendment deleted the designation of subsec. 1; added ", pursuant to the provisions of section 374.045 and chapter 536, RSMo" following "to implement the provisions of sections 374.500 to 374.515"; and deleted former subsecs. 2 to 5. Prior to amendment, former subsecs. 2 to 5 provided:

"2. No rule or portion of a rule promulgated under the authority of sections 374.512 and 374.515 shall become effective until it has been approved by the joint committee on administrative rules. Upon filing any proposed rule with the secretary of state, the department shall concurrently submit such proposed rule to the committee which may hold hearings upon any proposed rule or portion thereof at any time. In the event the committee disapproves any proposed rule or portion thereof, the committee shall notify the department and the secretary of state. If any proposed rule or portion thereof is disapproved by the committee, the secretary of state shall publish in the Missouri Register, as soon as practicable, an order that such rule or portion thereof has been disapproved.

"3. The department shall not file any final order of rulemaking with the secretary of state until twenty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the twenty-day period. If the committee neither approves or disapproves any order of rulemaking within the twenty-day period, the department may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved, subject to subsequent suspension by the committee. In the event the committee disapproves any order of rulemaking or portion thereof, the committee shall notify the department and the secretary of state.

"4. Any rule or portion of a rule promulgated under the authority of sections 374.512 and 374.515 may be suspended by the committee at any time after a hearing conducted thereon. If any rule is suspended by the committee, the secretary of state shall publish in the Missouri Register, as soon as practicable, an order withdrawing the rule.

"5. Any person seeking judicial review of any such rule shall be deemed to have exhausted all administrative review procedures. Notwithstanding the provisions of section 1.140, RSMo, the provisions of sections 374.512 and 374.515 are nonseverable and the grant of rulemaking authority is essentially dependent on the review power vested with the committee. If the review power is held unconstitutional or invalid, the grant of rulemaking authority and any rule promulgated under such rulemaking authority shall also be invalid or void."

REGULATION OF BAIL BOND AGENTS

374.700. Definitions

As used in sections 374.700 to 374.775, the following terms shall mean:

(1) "Bail bond agent", a surety agent or an agent of a property bail bondsman who is duly licensed under the provisions of sections 374.700 to 374.775, is employed by and is working under the authority of a licensed general bail bond agent;

(2) "Department", the department of insur

(3) "Director", the director of the departm

(4) "General bail bond agent", a surety a sections 374.700 to 374.775, who is licensed i who devotes at least fifty percent of his wor

(5) "Property bail bondsman", a person w postal money orders or cashier's checks o connection with a judicial proceeding, and other things of value;

(6) "Surety bail bond agent", any person execute or countersign bail bonds in connect is promised money or other things of value t

(7) "Surety recovery agent", a person nc who tracks down, captures and surrender violated a bail bond agreement, excluding

(Amended by L.2001, S.B. No. 267, § A.)

Historical a

2001 Legislation

L.2001, S.B. No. 267, § A, added subsec. (7).

Notes

Construction with other law 1

1. Construction with other law

Bail bond agents of general bail bond ag were independent contractors and not employe for purposes of Employment Security Law, wh

374.705. Department of insurance p

1. The department shall administer a 374.775, prescribe the duties of its officers 374.775, and promulgate, pursuant to secti regulations within the scope and purview the director considers necessary and pro tion of the provisions of sections 374.700 to

2. The director shall set the amount o of sections 374.700 to 374.775 by rules an RSMo. All such fees shall be set at a l substantially exceed the cost and expense to 374.775.

(Amended by L.1993, S.B. No. 52, § A.)

Historical

1993 Legislation

The 1993 amendment in subsec. 1 inserted " tion 374.045 and" following "and promulgate, suant to."

374.710. License required for bail l

1. Except as otherwise provided in se shall practice as a bail bond agent or gen Missouri unless and until the department as hereinafter provided, to practice as

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(2) "Department", the department of insurance of the State of Missouri;

(3) "Director", the director of the department of insurance;

(4) "General bail bond agent", a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

(5) "Property bail bondsman", a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;

(6) "Surety bail bond agent", any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor;

(7) "Surety recovery agent", a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, excluding a bail bond agent or general bail bond agent.

(Amended by L.2001, S.B. No. 267, § A.)

Historical and Statutory Notes

2001 Legislation

L.2001, S.B. No. 267, § A, added subsec. (7).

Notes of Decisions

Construction with other law 1

1. Construction with other law

Bail bond agents of general bail bond agent were independent contractors and not employees, for purposes of Employment Security Law, where each agent determined the appropriateness of issuing bond in particular case, worked in different locations, paid own expenses, and collected percentage of premium on each bond, though licensing statute defined bail bond agent as employee of general bail bond agent. Division of Employment Sec. v. Hatfield (App. W.D. 1992) 831 S.W.2d 216.

374.705. Department of insurance powers and duties—fees, how determined

1. The department shall administer and enforce the provisions of sections 374.700 to 374.775, prescribe the duties of its officers and employees with respect to sections 374.700 to 374.775, and promulgate, pursuant to section 374.045 and chapter 536, RSMo, such rules and regulations within the scope and purview of the provisions of sections 374.700 to 374.775 as the director considers necessary and proper for the effective administration and interpretation of the provisions of sections 374.700 to 374.775.

2. The director shall set the amount of all fees authorized and required by the provisions of sections 374.700 to 374.775 by rules and regulations promulgated pursuant to chapter 536, RSMo. All such fees shall be set at a level designed to produce revenue which shall not substantially exceed the cost and expense of administering the provisions of sections 374.700 to 374.775.

(Amended by L.1993, S.B. No. 52, § A.)

Historical and Statutory Notes

1993 Legislation

The 1993 amendment in subsec. 1 inserted "section 374.045 and" following "and promulgate, pursuant to."

374.710. License required for bail bond agents—exception

1. Except as otherwise provided in sections 374.700 to 374.775, no person or other entity shall practice as a bail bond agent or general bail bond agent, as defined in section 374.700, in Missouri unless and until the department has issued to him a license, to be renewed each year as hereinafter provided, to practice as a bail bond agent or general bail bond agent.

2. Nothing in sections 374.700 to 374.775 shall be construed to prohibit any person from posting or otherwise providing a bail bond in connection with any legal proceeding, provided that such person receives no fee, remuneration or consideration therefor.

(Amended by L.1995, S.B. No. 3, § A.)

Historical and Statutory Notes

1995 Legislation

The 1995 amendment deleted subsec. 3.

374.715. Application, form, qualifications, fee—monetary assignment required, amount, effective when

Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is at least twenty-one years of age, is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that the applicant, or, if the applicant is a corporation or partnership, that each officer or partner thereof has completed at least two years as a bail bond agent, as defined in sections 374.700 to 374.775, and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. The assignment required by this section shall be in the form, and executed in the manner, prescribed by the department.

(Amended by L.1997, S.B. No. 248, § A.)

Historical and Statutory Notes

1997 Legislation

The 1997 amendment, in the second sentence, substituted "is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule" for "and is of good moral character".

374.720. Examination notice—form—content—reexamination

1. Each applicant for licensure as a general bail bond agent, after complying with this section and the provisions of section 374.715, shall be issued a license by the department unless grounds exist under section 374.755 for denial of a license.

2. Each applicant for examination and licensure as a bail bond agent, after complying with the provisions of section 374.715, shall appear for examination at the time and place specified by the department. Such examination shall be as prescribed by the director as provided under section 375.018, RSMo, and shall be designed to test the applicant's knowledge and expertise in the area of surety bonds in general and the practice of a bail bond agent, as defined in sections 374.700 to 374.775, in particular. The applicant shall be notified of the result of the examination within twenty working days of the examination. Any applicant who fails such examination may, upon reapplication and payment of the reexamination fee set by the department, retake the examination.

(Amended by L.1993, H.B. No. 709, § A.)

Historical and Statutory Notes

1993 Legislation

The 1993 amendment substituted "department" for "division" in subsec. 1; and in subsec. 2, in the first sentence, substituted "at the time and place specified by the department" for "before the division at the time and place specified by the division in a written notice", substituted "shall be as prescribed by the director as provided under section 375.018, RSMo" for "may be either written or oral, as the division determines" in the second sentence, inserted the third sentence, and in the fourth sentence, substituted "department, retake the examination" for "division, retake the examination; provided, however, that no applicant may retake the examination more than three times".

374.730. License, annual renewal, fee

All licenses issued to bail bond agents and gen sections 374.700 to 374.775 shall be renewed ann manner prescribed by the department and shall l department.

Historical and St

Republished to conform to RSMo 2000.

374.735. Examination not required, when

The department may, in its discretion, grant a bail bond agent who has been licensed in another the department, if the department is satisfied qualifications are at least equivalent to the requ agent in Missouri under the provisions of sections

Historical and Sta

Republished to conform to RSMo 2000.

374.740. Nonresident license requirement

Any person applying to be licensed as a nonresi bail bond agent who has been licensed in anot working time in the state of Missouri and shall fi his compliance, and accompany his application wi for a nonresident general bail bond agent's lic twenty-five thousand dollars to the state of Missou upon the applicant's violating any provision of sec with this section will result in revocation of th required by this section shall be in the form and department. All licenses issued under this sect requirements set for other licenses issued under se

Historical and Stat

Republished to conform to RSMo 2000.

374.750. Refusal to issue or renew license–

The department may refuse to issue or renew 374.700 to 374.775 for any one or any combination department shall notify the applicant in writing of the applicant of his right to file a complaint with provided by chapter 621, RSMo.

Historical and Stat

Republished to conform to RSMo 2000.

374.755. Complaint by division, procedure–

1. The division may cause a complaint to b commission as provided by chapter 621, RSMo, aga sections 374.700 to 374.775 or any person who has license for any one or any combination of the followi

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amination" for "division, retake the examination; provided, however, that no applicant may retake the examination more than three times".

374.730. License, annual renewal, fee

All licenses issued to bail bond agents and general bail bond agents under the provisions of sections 374.700 to 374.775 shall be renewed annually, which renewal shall be in the form and manner prescribed by the department and shall be accompanied by the renewal fee set by the department.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.735. Examination not required, when

The department may, in its discretion, grant a license without requiring an examination to a bail bond agent who has been licensed in another state immediately preceding his applying to the department, if the department is satisfied by proof adduced by the applicant that his qualifications are at least equivalent to the requirements for initial licensure as a bail bond agent in Missouri under the provisions of sections 374.700 to 374.775.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.740. Nonresident license requirements

Any person applying to be licensed as a nonresident bail bond agent or nonresident general bail bond agent who has been licensed in another state shall devote fifty percent of his working time in the state of Missouri and shall file proof with the director of insurance as to his compliance, and accompany his application with the fee set by the board and, if applying for a nonresident general bail bond agent's license, with a duly executed assignment of twenty-five thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.700 to 374.775. Failure to comply with this section will result in revocation of the nonresidence license. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. All licenses issued under this section shall be subject to the same renewal requirements set for other licenses issued under sections 374.700 to 374.775.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.750. Refusal to issue or renew license—applicant's right to hearing

The department may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755. The department shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.755. Complaint by division, procedure—grounds—disciplinary action

1. The division may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 374.700 to 374.775 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:

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(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of the profession licensed under sections 374.700 to 374.775;

(2) Having entered a plea of guilty or having been found guilty of a felony;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 374.700 to 374.775 or in obtaining permission to take any examination given or required pursuant to sections 374.700 to 374.775;

(4) Obtaining or attempting to obtain any compensation as a member of the profession licensed by sections 374.700 to 374.775 by means of fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession licensed or regulated by sections 374.700 to 374.775;

(6) Violation of, or assisting or enabling any other person to violate, any provision of sections 374.700 to 374.775 or of any lawful rule or regulation promulgated pursuant to sections 374.700 to 374.775;

(7) Transferring a license or permitting another person to use a license of the licensee;

(8) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections 374.700 to 374.775 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) Being finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice the profession licensed or regulated by sections 374.700 to 374.775 who is not currently licensed and eligible to practice under sections 374.700 to 374.775;

(11) Paying a fee or rebate, or giving or promising anything of value, to a jailer, policeman, peace officer, judge or any other person who has the power to arrest or to hold another person in custody, or to any public official or employee, in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof;

(12) Paying a fee or rebate, or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(13) Paying a fee or rebate, or giving or promising anything of value, to the principal or anyone in his behalf;

(14) Participating in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

2. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the causes stated in subsection 1 of this section have been met, the department may do any or all of the following:

(1) Censure the person involved;

(2) Place the person involved on probation on such terms and conditions as the department deems appropriate for a period not to exceed ten years;

(3) Suspend, for a period not to exceed three years, the license of the person involved;

(4) Revoke the license of the person involved.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

374.757. Apprehension; notice to local law enforcement officials

1. Any agent licensed by sections 374.700 to 374.775 who intends to apprehend any person in this state shall inform law enforcement authorities in the city or county in which such agent intends such apprehension, before attempting such apprehension. Such agent shall present

to the local law enforcement authorities a certifie
paperwork identifying the principal and the per
ment may accompany the agent. Failure of any
with the provisions of this section shall be a class
class D felony for subsequent violations; and sh
may in addition be punished pursuant to that sect

2. The surety recovery agent shall inform th
where such agent is planning to enter a residenc
the bond and all appropriate paperwork to ide
when notified, may accompany the surety recove
an active warrant is effective for a felony or m
local law enforcement officers may accompany
Failure to report to the local law enforcement
subsequent violations, failure to report to the
felony.

(L.2001, S.B. No. 267, § A.)

374.760. Unsatisfied judgments, affidavit

Each general bail bond agent shall file, betwe
sworn affidavits with the department stating tha
him. Such affidavits shall be in the form a

Historical and St

Republished to conform to RSMo 2000.

374.763. Forfeiture of defendant's bond censed bail bond agents to be

1. If any final judgment ordering forfeiture
period of time ordered by the court, the court
satisfy such judgment. The director shall draw
to the court, and obtain a receipt of such sum f
as provided by section 374.755 or 374.430,[1] reg
bond agents writing upon the surety's liability.

2. The department shall furnish to the presi
on at least a monthly basis, a list of all duly
general bail bond agents whose licenses are no
proceedings, and who are not subject to unsat
such list, the department may provide this
electronic format.

(L.1997, S.B. No. 248, § A.)

[1] Section 374.430 does not exist.

374.770. Bond forfeiture, when—except States, procedure—surety's obligations of bondsman

Notes of I

Hearing 4
Judgments 2
Questions of law 3

1. Incarceration

Trial court was statutorily required to set aside bond forfeiture, though principal was not incarcer-

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to the local law enforcement authorities a certified copy of the bond and all other appropriate paperwork identifying the principal and the person to be apprehended. Local law enforcement may accompany the agent. Failure of any agent to whom this section applies to comply with the provisions of this section shall be a class A misdemeanor for the first violation and a class D felony for subsequent violations; and shall also be a violation of section 374.755 and may in addition be punished pursuant to that section.

2. The surety recovery agent shall inform the local law enforcement in the county or city where such agent is planning to enter a residence. Such agent shall have a certified copy of the bond and all appropriate paperwork to identify the principal. Local law enforcement, when notified, may accompany the surety recovery agent to that location to keep the peace if an active warrant is effective for a felony or misdemeanor. If a warrant is not active, the local law enforcement officers may accompany the surety recovery agent to such location. Failure to report to the local law enforcement agency is a class A misdemeanor. For any subsequent violations, failure to report to the local law enforcement agency is a class D felony.

..2001, S.B. No. 267, § A.)

74.760. Unsatisfied judgments, affidavit filed monthly, form—content

Each general bail bond agent shall file, between the first and the tenth day of each month, sworn affidavits with the department stating that there are no unsatisfied judgments against him. Such affidavits shall be in the form and manner prescribed by the department.

Historical and Statutory Notes

Republished to conform to RSMo 2000.

74.763. Forfeiture of defendant's bond, failure to pay judgment—list of licensed bail bond agents to be provided

1. If any final judgment ordering forfeiture of a defendant's bond is not paid within the riod of time ordered by the court, the court shall notify the department of the failure to tisfy such judgment. The director shall draw upon the assets of the surety, remit the sum the court, and obtain a receipt of such sum from the court. The director may take action provided by section 374.755 or 374.430,[1] regarding the license of the surety and any bail nd agents writing upon the surety's liability.

2. The department shall furnish to the presiding judge of each circuit court of this state, at least a monthly basis, a list of all duly licensed and qualified bail bond agents and neral bail bond agents whose licenses are not subject to pending suspension or revocation oceedings, and who are not subject to unsatisfied bond forfeiture judgments. In lieu of h list, the department may provide this information to each presiding judge in an ctronic format.

.997, S.B. No. 248, § A.)

Section 374.430 does not exist.

.770. Bond forfeiture, when—exception, defendant incarcerated in United States, procedure—surety's duties—violation of bond, rights and obligations of bondsman

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ial court was statutorily required to set aside forfeiture, though principal was not incarcerated through bail bond surety's efforts, where surety established that principal was incarcerated somewhere within United States after order of forfeiture but prior to entry of judgment, and principal was released only after trial court permitted him to post new bond. State v. Siemens (App. W.D. 2000) 12 S.W.3d 776.

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Exception exists to the general rule that a bail bond surety is not legally entitled to have a bond forfeiture set aside unless he produces the principal through his own efforts prior to the time judgment is entered on the forfeiture: if the surety can show at the time that the principal first fails to appear that the surety's failure to produce the principal is due to the latter's incarceration somewhere in the United States, then the court will not declare a bond forfeiture in the first instance, but the surety is liable for the return of the principal. State v. Siemens (App. W.D. 2000) 12 S.W.3d 776.

Under statute requiring trial court to set aside forfeiture of bond if bail bond surety shows that principal was incarcerated somewhere in United States, there is no additional requirement for surety to act with good faith and diligence in producing the principal before the trial court is required to set the forfeiture aside. State v. Siemens (App. W.D. 2000) 12 S.W.3d 776.

Whether the trial court is required to set aside a judgment ordering forfeiture of bail bond under statute creating exception when principal is incarcerated somewhere in United States is a question of law, which appellate court determines de novo. State v. Goodrich (App. W.D. 2000) 12 S.W.3d 770.

Bail bond surety that showed that defendant was incarcerated somewhere in United States was not entitled to have bail bond forfeiture set aside, though surety brought its motion to set aside within one year after entry of judgment, where incarceration occurred after judgment on forfeiture was final and was paid without appeal, and surety did not allege facts such as mistake or fraud to satisfy general rule permitting court to set aside judgments. State v. Goodrich (App. W.D. 2000) 12 S.W.3d 770.

Statute providing that bail bond forfeiture shall be set aside upon showing that principal was incarcerated somewhere in United States only permits the trial court to set aside an order of forfeiture; it does not permit trial court to set aside a judgment entered on the forfeiture once that judgment has become final. State v. Goodrich (App. W.D. 2000) 12 S.W.3d 770.

2. Judgments

Statute directing trial court to set aside appearance bond forfeiture where surety can subsequently prove that defendant is incarcerated is not directed to judgments, and thus, had no application to court's setting aside only $2,000 of $2,500 judgment on bond forfeiture. State v. Yount (App. E.D. 1991) 813 S.W.2d 85, rehearing and/or transfer denied.

3. Questions of law

Whether the trial court is required to set aside bail bond forfeiture under statute creating exception when principal is incarcerated somewhere in United States is a question of law, which appellate court determines de novo. State v. Siemens (App. W.D. 2000) 12 S.W.3d 776.

4. Hearing

If bail bond surety is not able to show at the time of principal's initial failure to appear that the principal is incarcerated somewhere in the United States, then the court may order the bond forfeited; however, to enter a judgment on the forfeiture the court must hold a hearing on the forfeiture at which the surety is given notice of its right to appear. State v. Siemens (App. W.D. 2000) 12 S.W.3d 776.

WORKERS' COMPENSATION RESIDUAL MARKET, REPORT

374.790. Workers' compensation residual market—plan to reduce number of insured employers

The department of insurance shall prepare and submit a plan to the general assembly by September 1, 1993, to reduce the number of employers insured through the residual market. The department shall specifically examine and address in its plan the following topics:

(1) The use of an employer's experience modification factor and the appropriate level thereof as an objective criteria in determining eligibility for coverage;

(2) The maximum amount of such coverage an insurer would be required to issue, expressed as a percentage of its voluntary business;

(3) Providing a system of incentives to insurers to voluntarily cover employers which had been insured through the residual market by reducing the amount of coverage required to be provided by such insurer under the plan;

(4) The effect of the implementation of such plan on the competitive voluntary insurance workers' compensation market in Missouri in terms of the number of insurers actively competing, the availability of coverage by classification and pricing by classification;

(5) Permitting insurers to file separate rates by classification for employers which they may be required to insure under such plan;

(6) Requiring that only agents which have been appointed by such insurer may submit applications for coverage under such plan;

(7) The results of this plan in other jurisdict workers' compensation or other lines of insuran

(8) Requiring nonexperienced rated employ rating, as a condition to receive coverage, to program and to comply with the insurer's l Upon receipt of the plan, the general assemb such plan by September 24, 1993. If the plan rule on January 1, 1994. If the plan is not s provisions of this section, it shall not be impleme

(L.1993, S.B. No. 251, § A(§ 16).)

Notes of I

Construction and application 1

1. Construction and application

Director of Department of Insurance was not authorized to implement new residual market for workers' compensation insurance through rule, notwithstanding legislation providing that plan submitted to general assembly and not disapproved by general assembly could be so imple-

374.800. Department of insurance; cer proved by the attorney gener

1. Notwithstanding any other provision of l to enter into any contract or other written a payment of money by the state in excess of o potential reduction of a party's financial oblig thousand dollars, the department of insurance before entering into that contract, subcontract letter of intent.

2. Upon receiving the contract, other writt general shall, within ten days, review and app letter of intent for its legal form and content as of the state. If the attorney general does not a the contract, other written agreement or letter as may be necessary to the proper enforceme state's legal interest. If the attorney general d of any contract that involves a payment of mo reduction of a party's financial obligation to th thirty days, the contract shall be deemed appro

3. Communications related to the attorney cations. The attorney general's written dispo

L.2001, H.B. No. 762, § A.

CHAPT

PROVISIONS APPLICABLE TO

POLICY CANCELLATION

Section
375.011. Notice of cancellation, nonrenewal, renewal, or refusal to write, may be sent, how.

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(7) The results of this plan in other jurisdictions where it has been implemented in either workers' compensation or other lines of insurance;

(8) Requiring nonexperienced rated employers or employers not eligible for experience rating, as a condition to receive coverage, to utilize the insurer's managed care medical program and to comply with the insurer's loss control or safety engineering program.

Upon receipt of the plan, the general assembly shall, by concurrent resolution disapprove such plan by September 24, 1993. If the plan is not disapproved it shall be implemented by rule on January 1, 1994. If the plan is not submitted to the general assembly under the provisions of this section, it shall not be implemented by rule.

(L.1993, S.B. No. 251, § A(§ 16).)

Notes of Decisions

Construction and application 1

1. Construction and application

Director of Department of Insurance was not authorized to implement new residual market for workers' compensation insurance through rule, notwithstanding legislation providing that plan submitted to general assembly and not disapproved by general assembly could be so implemented, where receipt by chief clerk of House of copy of plan while House was not in session did not satisfy statutory requirement; chief clerk was not member of House, and had no duty to distribute plan to members; because there was no "receipt" of plan by House members, plan was not submitted to general assembly for purposes of authorizing implementation of plan by rule. State ex rel. Royal Ins. v. Director of Missouri Dept. of Ins. (Sup. 1995) 894 S.W.2d 159.

374.800. Department of insurance; certain contracts to be reviewed and approved by the attorney general

1. Notwithstanding any other provision of law, when the department of insurance intends to enter into any contract or other written agreement or approve any letter of intent for payment of money by the state in excess of one hundred thousand dollars, modification or potential reduction of a party's financial obligation to the state in excess of one hundred thousand dollars, the department of insurance shall forward a copy to the attorney general before entering into that contract, subcontract or other written agreement or approving the letter of intent.

2. Upon receiving the contract, other written agreement or letter of intent, the attorney general shall, within ten days, review and approve that contract, other written contract or letter of intent for its legal form and content as may be necessary to protect the legal interest of the state. If the attorney general does not approve, then the attorney general shall return the contract, other written agreement or letter of intent with additional proposed provisions as may be necessary to the proper enforcement of the contract as required to protect the state's legal interest. If the attorney general does not respond within ten days or, in the case of any contract that involves a payment of money by the state or a modification or potential reduction of a party's financial obligation to the state of one million dollars or more, within thirty days, the contract shall be deemed approved.

3. Communications related to the attorney general's review are attorney-client communications. The attorney general's written disposition shall be subject to chapter 610, RSMo.

L.2001, H.B. No. 762, § A.

CHAPTER 375

PROVISIONS APPLICABLE TO ALL INSURANCE COMPANIES

POLICY CANCELLATION

Section

375.011. Notice of cancellation, nonrenewal, renewal, or refusal to write, may be sent, how.

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GENERALLY

375.012. Definitions.

375.012. Definitions.

375.013. Promulgation of rules—effective date.

375.014. Insurance agents, license required.

TESTIMONY IN OPPOSITION TO SENATE BILL 599

My name is Shane Rolf. I have been in the bail bond business in Johnson County for seventeen years. I am a member of the Olathe Area Chamber of Commerce and completed their Leadership program in 1997. I am a member of the National Federation of Independent Business and the Better Business Bureau of Kansas City. I am also a husband and a father and a lifelong resident of the State of Kansas.

I would like to present the Committee with my comments in opposition to Senate Bill 599.

Typically, it is easy to see what problem a particular bill hopes to solve. However, in the case of this bill, what the intent and purpose of these wholesale changes to K.S.A. 22-2806, is not entirely clear. It does not propose to establish rules that apply to every bondsman in the state – bondsmen who write bail for insurance companies are specifically excluded from any of the provisions of this bill. This bill would only affect a surety who posts bail based upon assets owned by that surety, such as myself. Nor does it seek to provide more security to the State for bail bond undertakings – in fact it reduces that security tenfold. It appears that the sole purpose of this bill is to place heavy burdens, in the form of large cash requirements and increased "licensing" expenses, upon sureties who qualify under 22-2806.

If there is a problem this bill hopes to solve, I cannot see what it would be, with the exception of limiting competition for the insurance based bail bond companies.

Please keep this in mind should someone from the insurance side of the bonding business testify before you. If he tells you that this bill is fabulous, his motives for doing so are probably less than pure.

At the end of my written testimony you will find three alternative proposals for modifying K.S.A. 22-2806. The proposals are not as radical as this bill and harm neither the legitimate property based sureties, nor do they damage the State of Kansas by causing it to accept less security on surety bail. These alternative proposals specify the type of property which may be used to justify as a surety and/or specify the requirements for insuring that the property used has a legitimate value. If these concerns are raised by anyone who supports this bill, I would urge you to consider using one of these proposals to address those concerns, rather than the current bill proposal.

Having said this, I will attempt to address my concerns, both generally and specifically, as to the new sections which have been proposed for 22-2806.

GENERAL PROBLEMS WITH SB 599

1. The bill is unnecessary and will not stand up to legal review. The language of K.S.A. 22-2806, as it stands now, is lifted, almost verbatim, from the Federal Code (Rule 46). This statutory language is tried and true and has been reviewed multiple times. This bill is vague and confusing. The end result of this bill passing would be to allow the Supreme Court to interpret it and construe it to mean whatever they wanted it to mean.

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2. There is no problem with professional bail bonding that the enactment of this bill would fix. Any claim that this would expedite collection of bond forfeiture judgments is inaccurate. Property bondsmen, who would be the only class of surety affected by this bill, are not the typical source of unpaid bond forfeitures. (reference my comments herein regarding Amwest Insurance and Farwest Insurance and their recent liquidations)

3. This would remove the courts' ability to allow someone other than a bail bondsman to act as surety. For example: the court would no longer be able to allow the parents of a defendant to act as surety. A defendant could still be released to his parents, as per 22-2802, but no longer could the courts require them to bind themselves as surety on a bond. The language of this bill requires bail bond experience, licensing, etc, to the exclusion of any other type of surety release.

4. The bill makes no distinction between "surety" and "bondsman", a surety being the person or entity guaranteeing the bond, the bondsman being the person who actually executes the bond. These are not interchangeable terms. More often than not the "bondsman" is acting as an agent for the "surety." Despite the fact that 22-2806 carries the title **Justification of Sureties**, whoever wrote this bill ceased using the term "surety" after the first sentence. Additionally, it introduces a number of terms, most particularly the term "professional bondsman," without giving any definition whatsoever as to what these terms are supposed to mean.

5. This bill, as it is now written, mixes up its legal terms. The first sentence of the bill states: Every surety, …., shall **justify** by affidavit to the chief judge of the district court to which such surety is making application that such surety:…" Then proceeds to list off multiple requirements that have absolutely nothing to do with the legal act of "justification." Justification *is* a legal term, which means, in essence: proof of qualification as bailor or surety, as by showing ownership of enough property. Section (a) does not come close to meeting the generally accepted notion of justification, in that justification is a primarily financial function. Again, this mixing of legal terms would give the Supreme Court more of an opening to construe this law to mean whatever they chose it to mean.

SOURCE OF NEW LANGUAGE AND NEW SECTIONS

The bulk of this proposed new language is taken verbatim from multiple statutes of the state of Oklahoma. However, these paragraphs have been removed piecemeal from the Oklahoma statutes, and the author of this bill has tried to simply graft these random paragraphs into the current Kansas Statute. In this grafting, these paragraphs have been altered in such a way that much of their meaning and practical and procedural function has been completely changed. For instance:

(1) The licensing fees, in Oklahoma, are to be paid to the Insurance Commissioner, not to the district court. The license fees, which I will discuss in depth later, are the same for *all* bondsmen, both property and insurance, and the license is valid

for the entire state. There is no necessity to procure additional licenses for each district or each court.

(2) Every function that is assigned to the Insurance Commissioner in Oklahoma, this bill attempts to assign to the chief judge of each judicial district.

(3) The requirements referenced in section (a) of this bill are identical to those in Oklahoma statute 59-1305, with a few word changes that change the meaning of those requirements completely:

The bill states at (a)(3) that the surety has not been convicted of, or pled guilty ..... to, *a* felony or misdemeanor involving moral turpitude. The Oklahoma Statute states that a bondsman "has not been convicted of or pled guilty .... to, *any* felony, or to a misdemeanor involving moral turpitude." The difference here is that the bill would not prevent convicted felons from writing bail, it would only prevent felons convicted of crimes of moral turpitude from writing bail. In truth, since most district courts won't let convicted felons post bail anyway, this bill would probably set a precedent for *allowing* certain felons to post bail, rather than restricting them.

At (a) (6), the bill states that a requirement would be that the surety "*is actively engaged* in the bail bond business." Whereas the Oklahoma statute from which this was extracted states simply that the bondsman "*will actively engage* in the bail bond business." The difference is that this bill would make it impossible for someone new to enter into the bail bond business.

(4) Additionally, the author of this bill has simply ignored large segments of the Oklahoma Code which relate to "property bondsmen." Oklahoma Statute 59-1324 allows "property bondsmen" to use property to guarantee their bonds. Further it allows bonds to be written in an aggregate amount equal to **four times** the market value of the property. As it stands now in Kansas, bonds can only be written in an aggregate amount *equal* to the market value of the property. But the author of this bill doesn't want that section of the Oklahoma law enacted here because it would make "property bondsmen" even more of a competitive threat.

(5) In short, Oklahoma has 39 separate statutes relating to bail bondsmen. Bail bondsmen may post bail as an agent for an insurance company, by virtue of property located within the state, OR by virtue of a deposit of cash with the Insurance Commissioner, and ALL bondsmen, irregardless of which mechanism they use to post bail are held to the same standards and are required to pay the same licensing fees. The author of this bill has simply cherry-picked those 39 statutes for various clauses he would like to insert into Kansas law.

PROBLEMS WITH EACH SECTION

Section (a) 1-7:

(1) *is at least 21 years of age* – There is nothing inherent in the bail bond business that would rule out someone 18-20 from actively participating. I was twenty years old when I started.

(2) *Is of good character and reputation* – How exactly is this determined? Is it enough to place a line in the affidavit which simply states: "I am of good character and reputation?" This is one of many instances wherein the bill is vague and meaningless.

(3) *Has not been previously convicted of, or plead guilty or nolo contendre to, a felony or misdemeanor involving moral turpitude* – Shouldn't this be "has not been convicted of *any* felony or a misdemeanor involving moral turpitude." As I noted earlier, this was altered from the Oklahoma statute, which says exactly what I am suggesting here.

(4) Is a citizen of the United States

(5) *Has been a bona fide resident of the state for at least one year* – This is another instance where the bill shows its bias against property bondsmen. Nothing prohibits an insurance agent from being an out of state resident and there is not a single insurance company engaged in surety bail in Kansas which is domestic to the state. Of the eighteen bonding agencies approved in Johnson County at least five are based in Missouri. So, while I personally agree that ALL bondsmen should be required to be Kansas residents, I cannot agree with a bill that restricts the residency of one class of bondsman while not restricting another class.

(6) *Is actively engaged in the bail bond business* – If one has not already been engaged in the bail bond business, how does one gain approval to start in the bail bond business. As I mentioned earlier, this is a section which has been altered from the original Oklahoma statute language to specifically limit new entry into the bail bond business .

(7) *Has knowledge or experience, or has received instruction in the bail bond business* – While this certainly sounds like a good idea, there is nothing here which sets the standards for such education. There is nothing here that assigns the setting of those standards to any particular official or agency. There is nothing here that indicates who is authorized to give such instruction. Is it sufficient that I train my own agents? Or do I need to send them off to some bail bond convention across the country to take a class? Even if these questions were answered, what does this requirement – or any of these requirements - have to do with demonstrating (or justifying) that one has the financial wherewithal to guarantee a bail bond?

Overall, these requirements are not necessarily bad. Quite frankly I agree with most of them: I certainly don't want convicted felons writing bail, the bail industry has enough of an image problem as it is. However, these requirements don't belong in this statute. If the legislature wishes to place these types of requirements on bail bondsmen, it should create additional statutes, probably an additional Article, to lay out the requirements and restrictions associated with being a bail bondsman, and those requirements should apply to all bail bondsmen, both property and insurance.

Section (b). Forms – This paragraph was taken from Oklahoma Statute 59-1305, which dictates that the Insurance Commissioner shall have forms, and it authorizes the Insurance Commissioner to investigate a person or entity completing those forms. As for

Kansas, some courts have forms, other simply expect an affidavit with attachments. This would require each district court to create forms to be used. I don't know that this is terribly important. If the courts wanted to do this, they already have the ability and authority to create their own forms.

As for investigating a surety, the courts already have this inherent authority. I have certainly seen it used on repeated occasions. It was more than likely needed in Oklahoma because the Insurance Commissioner probably did not have this same inherent authority.

Other than requiring the district courts to create forms to be used, this section doesn't really cover any new ground and simply demonstrates a poor attempt to graft this Oklahoma law into the Kansas Statute.

Section (c) Licensing fees. In my opinion this is where this bill really begins to lose its focus and deteriorate into little more than an attempt to eliminate or severely limit competition for the insurance companies. It states that "the applicant" [and at this point we don't know if by "applicant" it means the surety or each individual bail bondsman] shall furnish to the court a $250 license fee with the application. It does not say to whom this money is to be paid, certainly a check is not going to be made out to the Judge. It does not state how this money is to be allocated. [County General Fund, State General Fund, Clerk of the District Court, who knows?] It is further interesting to note that despite all this talk of licenses, nowhere in this bill does it say that an actual license will be issued.

A complete set of the "applicant's" fingerprints certified by a law enforcement officer – again is this the surety or the bondman? And what is to become of these fingerprints? Will they simply be recorded in the court's file or will they actually be entered into a database somewhere. If the fingerprints aren't going to be placed in a database, such as AFIS, what is the point of even requiring them? And if you've been authorized and submitted fingerprints before, do you have to continue to be fingerprinted each time you requalify?

Two recent credential size photographs of the "applicant" – again, no distinct idea of whether we are referring to the surety or a bondsman. And much like the fingerprint cards, no mention of what is to be done with these photographs.

The "applicant" shall provide an investigative fee of $100 with which the court will conduct an investigation of the "applicant." – Much like the "license fee", no mention of where this money goes or who the "applicant" is supposed to pay or how the court is supposed to 'investigate" the "applicant."

Note, that nowhere in section (c) or anywhere else in the bill, does it require the "applicant" to provide any personal data, such as a date of birth or social security number or any other identifier which would actually allow the court to investigate the "applicant." Nowhere is this bill does it simply require or even suggest that the "applicant" simply provide a copy or his/her drivers license.

Further, the amount of the "licensing fee" is outrageous. Assuming that by "applicant" the author of this bill in fact means bondman, this fee, including the obligatory "investigative fee" is more than 10 times the application fee for a Class Z (bail bond) insurance license [$30.00]. Further, a Class Z insurance license would be valid in every district and municipal court in the state. The language of this bill would require

payment of this $350.00 for, at the very least, each judicial district, and possibly, depending on how it was interpreted, for every municipal court as well.

Example: I have, including myself, eight people authorized to post bail on my behalf. This would be $2,800.00 in licensing fees. There are 17 municipal courts in Johnson County, plus the district court. If I wished to post bail in each of those cities – as I do now – it could well be argued that I would have to expend $50,400.00 in licensing fees [18 x $2,800.00 = $50,400.00]. And every jurisdiction I might wish to enter would cost me an additional $2,800.00. Whereas, if I were an insurance agency with eight bondsman, I would simply pay $240.00 [8 x $30 = $240.00] and I would be licensed for each and every jurisdiction in the state where I might want to apply. Under this bill, if I, as a property surety, wished to become approved in all 31 judicial districts in Kansas it would cost me $86,800.00 in licensing fees. As I mentioned before, a similarly sized insurance agency could be approved in all 31 districts for a total cost of $240.00. Clearly, this isn't even close to being fair and equal treatment.

The Oklahoma Statute from which this is gleaned, as I mentioned earlier, has the same licensing fees for ALL bondsmen and the license is good statewide. Further, the fee referenced in this bill is actually the *initial* application and licensing fee in Oklahoma; license renewal fees in Oklahoma are simply $100 and do not carry the requirement of the investigative fee (OSR 59-1309).

Section (d) Three months between applications. In my experience, about every other year, the courts have decided that I should add something to my qualifications. A more recent appraisal, an owner's encumbrance report on the property, etc. These are the types of things referenced in section (b), which I earlier indicated that the courts already do as a part of their inherent ability to question, examine and investigate a surety. However, under the language of section (d), it could be argued that any insufficiency in the initial affidavit would result in a three month suspension. I simply don't understand the rationale behind this section [with the exception of punishing the property bondsmen].

Section (e) Financial statement – This section starts out making perfect sense, it lays out in some detail that assets and liabilities must be set out and professionally ascertained. Then it states that these must be the assets of the "*applicant professional bondsman*". It specifically does not say "surety," and as I have discussed earlier, "surety" and "bondsman" are not interchangeable terms. What this section means then, is that in order for a bondsman to act as an agent for a surety, the **bondsman,** or agent, must demonstrate that he/she has a net worth of at least $50,000.00. It doesn't say why the bondsman, as opposed to the **surety** has to demonstrate his net worth. This is particularly strange since the bondsman's assets are not being used to justify the surety. I would also note that an insurance agent has no requirement to report, document or in any way disclose his net worth to the court, or even to the insurance commissioner. Section (e), like the rest of this bill, is very poorly written. While I could understand a requirement that a **surety** disclose its net worth, I would point out that 22-2806 already requires a

statement as to the value of the property being used and a listing of any encumbrances thereon.

Section (f) Deposits with the court. Again, the bill is no longer referring to the surety, but rather the "applicant professional bondsman". Since this is yet another unexplained, undefined and unsuccessful grafting of a particular paragraph of Oklahoma law, it raises more questions than it answers:

> Does a deposit with the District Court allow a surety to post bail in the municipal courts of that district? Or would a separate deposit be required for each and every municipal court. Again using Johnson County as an example, if the municipal courts were not included, it would take $360,000.00 in deposits to simply meet the minimum deposits dictated by the bill. In theory, one could then post bail bonds totaling $3.6 million, however, it is highly unlikely that one would ever even approach the $200,000 ceiling that this would grant in each city. For example, in 17 years I seriously doubt that I have posted a total of $20,000 in bonds in the City of Edgerton. On the other hand, however, the $200,000 limit would be quickly surpassed at the district court level. So obviously, unless the municipal courts were included in the deposits made with the district court, one would need far more than $360,000.00 in cash to deposit in order to actually function, at least in Johnson County.
>
> If the municipal courts were to be included in deposits at the district level, then this might be a great deal for the property based sureties, but not for the state. Those sureties could simply withdraw their property, borrow ten percent of the total value of the property, and deposit that percentage with the court. Their overall writing ability would be unchanged, but the court (and by extension the state) would have far less security on outstanding property based bonds than it currently has now. The sole drawback to a property based surety would be the need to deposit cash with – at the very least – each district in which it wanted to post bail.
>
> I would also note that the Oklahoma version of this scheme, calls for a deposit with a statewide agency, thus allowing the surety to post bail against that deposit anywhere in the state.
>
> Another problem is that this scheme seems to run afoul of both KSA 22-2802 and Article 9 of the Kansas Bill of Rights. The statute states, in part, in section (3) that "The appearance bond shall be executed with **sufficient solvent sureties** who are residents of the state of Kansas …" And Article 9 states, in part, that "All persons shall be bailable by **sufficient sureties** …" I don't think that a 10 percent reserve held by the district court or the county treasurer would in fact meet the demands of both the statute and the Constitution.

This idea of writing bail in amounts not to exceed ten times one's capital reserves is, of course, based upon the standard to which insurance companies in the bail bond business are held. Property based sureties in Kansas have historically been limited to posting bail in aggregate amounts which do not exceed the total value of their unencumbered property. Thus, if a property-based surety were to fail, the property is available, right here in the state of Kansas, to be seized and liquidated to cover

outstanding bond forfeiture judgments. However, insurance companies, in the surety and fidelity field (which includes bail bonds) are not required to have deposits within the state, unless they are a domestic company [which none of them are]. It is allowable, by statute, that non-domestic insurance companies can maintain their reserves on deposit with another state. In short, should an insurance-based surety fail, it is highly unlikely that the state would ever see any satisfaction of the judgments entered against that surety. This has proven to be the case time after time. Most recently, in the last six months we have seen the bankruptcy and liquidation of Amwest Surety Insurance Company and its sister company, Farwest Insurance. As an example of the contrast between property and insurance bonds, it is my understanding that Farwest had capital reserves of $700,000.00. In comparison, I have property pledged to the court and described in my affidavit with an unencumbered value of $1.68 Million. I am authorized to post bail in 4 *counties* in Kansas. Farwest was authorized to post bail in 34 *states*. At a multiplier of 10, Farwest could have had an aggregate amount of outstanding bonds of $7,000,000.00 at any one time. This means that on average, Farwest could have roughly $200,000.00 in outstanding bonds in each *state* at any given time. Liberty Bonding, one of Farwest's agencies, was posting almost $200,000 in bonds each month in Johnson County alone. The company was obviously overwritten and overextended when it failed.

If the legislature wished to solve *this* problem, and create a much more level playing field among all classes of bail bondsmen, it could simply require insurance companies posting surety bail in Kansas to maintain capital reserves on deposit with the Kansas Insurance Commissioner in an amount not less than 10 percent of its aggregate outstanding bonds.

Section (g) Holding the Cash Deposits. This section indicates that the County Treasurer should hold the cash deposit jointly with the "bondsman." Again, there is no reference to surety. Further, there is nothing to indicate how and where this money should be held, whether it should be in a federally insured account drawing interest or whether it should be in a coffee can underneath the County Treasurer's desk. If it is to be in an interest bearing account, to whom is the interest to be assigned? And who shall select the account? Logically, any income should go to the surety, as it is the surety's money.

The bill does state that "*Such deposits shall be subject to all laws, rules and regulations as deposits by domestic insurance companies ...*" However, that statute is K.S.A. 40-229a which indicates that those deposits are to be held by the Commissioner of Insurance in a Kansas financial institution in an account and manner as decided by the commissioner. That statement here makes absolutely no sense – the argument would be that section (f) requires you to deposit money with the court, by in fact depositing it with the county treasurer, in a manner consistent with deposits made with the Insurance Commissioner, which are in fact made into accounts selected by the Commissioner of Insurance. Since this statement is clearly contradictory, these deposits cannot be held by someone other than the Insurance Commissioner and still be "subject to all laws, rules and regulations as deposits by domestic insurance companies." This is another instance wherein the Oklahoma law does not transfer all that smoothly.

As for exactly how the deposits shall be held, the bill only states that the deposit shall be "*held in safekeeping*" and that the money deposited "*shall be used only if*

a bondsman fails to pay an order and judgment forfeiture after being properly notified." While it is implied, there is absolutely nothing which indicates what this deposited money will be used for. It further states that the deposit shall be used "*if the authority of the bondsman has been revoked by the court.*" This section ends with the statement that: "*The bondsman shall execute an assignment of the deposit to the treasurer for payment of unpaid bond forfeitures.*"

First, the County Treasurer doesn't collect bond forfeitures judgments, the Clerk of the District Court does, and disburses the proceeds to both the state and the county, as dictated by statute. And the Clerk of the Court would be responsible for obtaining any remissions – from the county and the state - ordered by the court.

Second, this should not say any "unpaid bond forfeitures," it should say "unpaid bond forfeiture *judgments*." "Bond forfeitures" and "bond forfeiture judgments" are not the same thing.

Third, since it does not say "judgments," this is contradictory to the language of section (g) at line 40 which states that this deposit with the County Treasurer "shall be used only if a bondsman fails to pay an order and judgment forfeiture," and then at line (1) of page three, requires the "bondsman" to assign the deposit to the treasurer for payment of "unpaid bond forfeitures." This represents a denial of due process. The language of section (g) at line (1) would allow the county treasurer to appropriate and disburse money without judgment having ever been entered against the surety.

Further, there is no need to "assign" this deposit to anyone, so long as it is held jointly, money cannot be withdrawn by the surety. Since the deposit could only be accessed in the event of an unpaid bond forfeiture judgment, the deposit could simply be garnished by the District Attorney – as the attorney for the state – and paid to the Clerk, just like any other civil judgment.

In short, this section is **far** too vague as to how large sums of money are to be secured and handled. This is nothing more than an invitation for someone to steal this money and leave the county or state responsible.

Section (h) Court approval of bond premium rates and criminal penalties for violation thereof. Obviously, I am completely opposed to this. The Courts should not have the authority to set the fees charged by any of the sureties in their district. Quite frankly, I don't know that the courts *want* this authority. The courts do not uniformly have any sort of actuarial experience, and nothing in this section requires the courts to be uniform in approving the premium rates. As this section stands, the court could allow one company to charge vastly different sums than another and, in fact, would not have any authority whatsoever over the rates that an "insurance bondman" would or could charge. This would allow a court to essentially drive a bonding company out of business by refusing to allow it to charge rates which would allow it to remain solvent. Additionally, this section does not set any sort of standard by which the court is supposed to determine the maximum allowable premium. I would note that insurance companies in general are required to submit their minimum premium rates to the Insurance Commissioner. The Insurance Commissioner is supposed to make a determination as to whether or not those

rates are too low for the company to maintain its solvency. I don't see how each individual district court could possibly be expected to make these determinations. If there is a problem with overcharging, it certainly isn't occurring in my neighborhood. In fact, it is more that the reverse is true. In Johnson County there are currently 18 bail bond agencies authorized to post bonds in the district court. The market itself is going to prevent any real price gouging.

As for the criminal penalties, the bill declares only that charging a premium larger than is authorized by the court is a misdemeanor. However, it does not state what class of misdemeanor this is to be and it does not indicate who, exactly, would be charged with this crime, the bondsman or the surety.. This section was not taken from the Oklahoma statutes and appears to be something thrown in to harm the property based surety.

Section (i) Liability and Errors and Omissions policy. Once again, most insurance agents are required to have EAO coverage and, since the author of this bill was clearly an insurance surety or bondsman, it makes sense that this would be tossed in as another expense requirement for a property based surety. However, I can't really think of instances where an EAO policy would really cover too much of what could go wrong with a bail bond. The person either gets out or they don't. Most EOA insurance is to cover you if you neglect to do something and the client is damaged as a result. In the case of bail bonds, there is little one can forget to do.

Section (j) Renewal of Licenses. The licenses which are never actually issued are to be renewed every two years. Johnson County's local rules currently require submitting qualifications from both insurance and property sureties on an annual basis. If it turns out I have to pay $50,000 dollars in "license fees", I would just as soon they be as far apart as possible. (Not that it matters all that much, if the fees are that high I won't be in the bail bond business anyway)

CLOSING

This bill, in its current format, is problematic at best and devastating to "property bondsmen" such as myself. It is not fair, in that it imposes overwhelming financial conditions upon one class of bail bond surety while doing absolutely nothing to the other. While I agree with many of the provisions and am intrigued by others, it is simply not workable in its current format. If there are to be massive deposits of cash, and sureties are to be allowed to post bail based upon a multiple of those deposits, then this method should be an additional option for acting as a professional surety, not a replacement for using property. Further, these deposits need to be made with some statewide official or agency with the resources and capacity to administer such a program, a capacity the district courts do not have and most likely do not want.

I would urge you not to let this bill advance from this committee in any form even slightly similar to its current language. If there are concerns as to the nature and sufficiency of property pledged by "property bondsmen" that the committee feels need to be addressed, please consider using one of the alternatives that I have attached to this testimony.

Thank you for your time and consideration of my testimony.

ADDRESSING CONCERNS AS TO THE NATURE OF COLLATERAL PROPERTY

22-2806

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102, and amendments thereto, shall justify by affidavit and may be required to describe in the affidavit the property by which such surety proposes to justify - *such property shall be limited to: real property located in this state, marketable securities as defined by K.S.A. 84-8-102, bonds issued by the United States or any political subdivision thereof, and certificates of deposit from any federally insured lending institution located in this state* - and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged and all such surety's other liabilities. No bond shall be approved unless the surety appears to be qualified. The appearance bond and the sureties may be approved and accepted by a judge of the court where the action is pending or by the sheriff of the county.

Indicates change

ADDRESSING CONCERNS AS TO THE VALUE OF COLLATERAL PROPERTY

22-2806

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102, and amendments thereto, shall justify by affidavit and may be required to describe in the affidavit the property by which such surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged and all such surety's other liabilities. *If property is required, this affidavit shall include and incorporate a written appraisal, as defined by K.S.A. 58-4102. Such written appraisal shall be prepared, at the expense of the surety, by a state licensed or state certified appraiser authorized under the provisions of K.S.A. 58-4101, et. Seq.* No bond shall be approved unless the surety appears to be qualified. The appearance bond and the sureties may be approved and accepted by a judge of the court where the action is pending or by the sheriff of the county.

Indicates change

ADDRESSING CONCERNS AS TO BOTH THE NATURE AND VALUE OF COLLATERAL PROPERTY

22-2806

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102, and amendments thereto, shall justify by affidavit and may be required to describe in the affidavit the property by which such surety proposes to justify - *such property shall be limited to: real property located in this state, marketable securities as defined by K.S.A. 84-8-102, bonds issued by the United States or any political subdivision thereof, and certificates of deposit from any federally insured lending institution located in this state* - and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged and all such surety's other liabilities. *If property is required, this affidavit shall include and incorporate a written appraisal, as defined by K.S.A. 58-4102. Such written appraisal shall be prepared, at the expense of the surety, by a state licensed or state certified appraiser authorized under the provisions of K.S.A. 58-4101, et. Seq.* No bond shall be approved unless the surety appears to be qualified. The appearance bond and the sureties may be approved and accepted by a judge of the court where the action is pending or by the sheriff of the county.

Indicates change

7-13

BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of the)
Kansas Resident Insurance Agent's)
License Of) Docket No. 2967-F
IVAN D. THOMPSON and)
LOREN THORMODSGARD AGENCY, INC.)
d/b/a/ VIKING BAIL BONDS)

INITIAL ORDER

On January 30, 2001, an Order to Show Cause was issued by the Commissioner of Insurance directing that the Respondents appear before the Commissioner of Insurance and to show cause why an order directing them to cease and desist the unauthorized business of insurance should be issued or in the alternative why they should not be required to be licensed as a surety insurance company.

On March 13, 2001, the parties at a prehearing conference advised the Presiding Officer that the facts of this case were not in dispute and that they would submit to the Presiding Officer a statement of stipulated facts. The parties further advised that both parties would submit briefs regarding the issue raised by the Commissioner and that the Presiding Officer could issue an Initial Order based upon the Stipulated Facts and the briefs submitted by the parties. On April 26, 2001, the parties submitted Stipulated Facts. On June 1, 2001, both parties submitted their legal briefs regarding this matter. On June 22, 2001, the parties submitted their responsive briefs.

STIPULATED FINDINGS OF FACT

1. Ivan D. Thompson ("Thompson)) is an individual residing at 2400 Happy Hollow Road, Topeka, Shawnee County, Kansas 66617.

2. Loren Thormodsgard Agency, Inc. (LTA) is a Kansas corporation doing business in the State of Kansas as Viking Bail Bonds ("Viking") with its principal place of business at 114 S.E. 8th Street, Topeka, Shawnee County, Kansas 66603.

3. All of the assets of Viking are owned by LTA.

4. All of the issued and outstanding stock of LTA is owned by Loren E. Thormodsgard and M. Charlene Thormodsgard, husband and wife.

5. Loren E. Thormodsgard and M. Charlene Thormodsgard (the "Thormodsgards") are individuals residing at 5316 S.W. 25th Terrace, Topeka, Shawnee County, Kansas 66614.

6. Loren E. Thormodsgard serves as President and Director and M. Charlene Thormodsgard serves as Secretary-Treasurer and Director of LTA, d/b/a Viking Bail Bonds.

7. Viking contracts with fourteen (14) individuals who are independent contractors authorized by it to sell and place bail bonds for Viking with Kansas courts in thirty-one (31) counties.

8. Bail bonds are a third party's pledge of money to the appropriate court to secure the release of a prisoner and guarantee his or her future appearance before that court as a specific date and time for further court action on criminal charges or traffic violations.

9. If the prisoner does not appear before the court as ordered, the face amount of his or her appearance bond may be ordered forfeited to the court.

10. The statute authorizing domestic or admitted foreign insurance companies through their appointed license insurance agents, to issue bail bonds is K.S.A. §40-1102(d).

11. Such insurance agents are required to meet Kansas statutory requirements for licensing at K.S.A. §§40-239 through 40-247, and amendments thereto.

12. The statute authorizing unlicensed individuals to be recognized by courts and law enforcement agencies to post uninsured bail and appearance bonds, also known as "pocket bonders," is K.S.A. §22-2806.

13. On or about April 11, 2000, LTA, d/b/a Viking Bail Bonds, Loren E. Thormodsgard and M. Charlene Thormodsgard, husband and wife, and Thompson entered into an agreement (the "Agreement") in which LTA and the Thormodsgards are collectively referred to as "Principal" and Thompson is referred to as "Surety."

7-15

14. Under the Agreement, Thompson agreed to be the surety on all bail bonds made by Viking, up to and including One Hundred Thousand Dollars ($100,000.00), and further agreed to execute a Limited Power of Attorney appointing the Thormodsgards as his attorneys in fact with limited power and authority to execute and deliver and affix his signature on bail bonds made by Viking.

15. Under the Agreement, Thompson is paid ten percent (10%) of the gross receipts of Viking in making bail bonds as compensation for appointing the Thormodsgards as his attorneys-in-fact under the Limited Power of Attorney and acting as surety on the bail bonds written by Viking.

16. Under the Agreement, Viking is required to segregate and pay a minimum of twenty percent (20%) of the net income it receives for making bail bonds into a "Build Up Fund" which serves as a reserve account to cover any bail bonds that need to be paid by Viking.

17. Under the Agreement, in the event that Thompson, as surety, is called upon to pay any sums on bail bonds issued by Viking, Viking must indemnify Thompson from any and all losses by repayment from the Build Up Fund.

18. Under the Agreement, Thompson has the right to terminate the agreement upon ninety- (90) days written notice to LTA and the Thormodsgards.

19. Viking's fourteen (14) independent contractors claim power of attorney to bind the assets of Thompson, as surety, on bail bonds issued by Viking to courts in thirty-one (31) Kansas counties.

20. The independent contractors, who act as Viking's agents or "pocket bonders," pledge Thompson's assets to the court as surety for the release and future appearance of released prisoners.

21. The individuals who purchase bail bonds from Viking's agents pay a non-returnable premium or fee of at least ten percent (10%) of the amount of the bond and may deposit collateral and pay other expenses to the agent for the bond.

22. Viking's agents are required by the terms of their agreement with Viking to remit fifty percent (50%) of the collected premiums or fees to Viking.

23. Viking's agents are required by terms of their agreement with Viking to segregate and pay twenty percent (20%) of their half of the premiums or fees to a "Build Up Fund" to be used to pay forfeitures when ordered by the courts.

24. Viking's agents, by the terms of their agreement with Viking, agree to hold harmless and indemnify Viking for any losses due to forfeiture or other expenses of a bail bond written by them.

25. By allowing Viking's "pocket bond" agents to present his financial statement with his limited power of attorney to bind those assets Thompson declares to the courts his financial ability to act as surety for Viking bail bonds.

26. The Commissioner of Insurance asserts that Thompson and LTA, d/b/a Viking, are collectively operating as an insurance company in violation of K.S.A. §40-214 and K.S.A. §40-2701, *et seq.*

27. Viking asserts that it is a "pocket bonder" and operates pursuant to K.S.A. §22-2806.

Applicable Law

1. Kansas Statutes Annotated (K.S.A.) 40-1102(d) provides as follows:

    > Any insurance company, other than a life insurance company, organized under the laws of this state or authorized to transact business in this state may make all or any one or more of the kinds of insurance and reinsurance comprised in any one of the following numbered classes, subject to and in accordance with its articles of incorporation and the provisions of this code.
    >
    > (1)(d). . . to become a surety or guarantor for the performance by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, except contracts or policies of insurance; . . . [Emphasis added.]

2. K.S.A. 40-201 provides as follows:

    > For purposes of this article the term "insurance company" shall, unless otherwise provided, apply to all corporations, companies, associations, societies, persons or partnerships writing

contracts of insurance, indemnity or suretyship upon any type of risk or loss. . .

3. K.S.A. 40-214 provides as follows:
   It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance. . .

4. K.S.A. 40-2701(b) provides as follows:
   (a) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state: (1) The making of or proposing to make as an insurer, an insurance contract; (2) the taking or receiving of any application for insurance; (3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof; (4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state; (5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications or delivery of policies or contracts or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and rising out of or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state . . . [Emphasis added.]

5. K.S.A. 22-2806 provides as follows:
   "Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102 and acts

amendatory thereof, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified. The appearance bond and the sureties thereon may be approved and accepted by a magistrate, by the clerk of the court where the action is pending or by the sheriff of the county."

Conclusions of Law

1. Clearly, it is the general principle that in Kansas a person, company, corporation or other entity must be licensed by the commissioner of insurance in order to transact business of insurance, indemnity or surety. K.S.A. 40-214.

2. The Kansas Criminal Code in Chapter 22 recognizes that bonding sureties may be licensed as insurance companies as provided by K.S.A. 40-1102 or a bonding surety may be excepted from the provisions of K.S.A. 40-1102(d). K.S.A. 22-2806 allows for a surety to be unlicensed and allows the surety to justify by affidavit properly pledged by surety for the appearance of a criminal defendant.

3. In this case, Ivan D. Thompson is the surety pledging his property to insure the appearance of criminal defendants in various courts in the state of Kansas. Mr. Thompson is the surety as envisioned in K.S.A. 22-2806. K.S.A. 22-2806 allows Thompson to act as a surety without meeting the licensing requirements of K.S.A. 40-1102.

4. While there is a complex and detailed contractual agreement between Thompson, the Thormodsgards, and Viking Bail Bonds, as well as the independent contractors operating through Viking Bail Bonds, the paramount fact is that Thompson remains the surety in each case. Thompson has pledged his property in each case. The fact that Thompson has appointed others with a limited power of attorney does not change the fact that Thompson is the surety. There has been nothing presented to the Presiding Officer that prohibits a surety, such as Thompson, from granting others a limited power of attorney to approve bonds.

5. The Attorney General's opinion cited by the Petitioner regarding K.S.A. 22-2806 for the principal that only individual and natural persons were authorized as sureties and not companies does not support the Petitioner's position. This is because the simple fact remains that Mr. Thompson is the individual acting as a surety. Although Mr. Thompson is acting as a surety under a limited power of attorney he granted others, he remains the surety pursuant to K.S.A. 22-2806.

6. The Petitioner's argument that allowing Thompson, the Thormodsgards and Viking Bail Bond to operate as they are allows them to evade the licensing provisions required by other insurance companies and constitutes unfair competition may have merit. However, unless the statutes prohibit the conduct of Thompson, the Thormodsgards and Viking Bail Bond, the Presiding Officer may not find that the action of the respondents is in violation of the law.

7. Certainly, it may be argued that the legislature in enacting K.S.A. 22-2806 did not envision the complex and extensive contractual arrangements as set forth between Thompson, Thormodsgards and Viking Bail Bonds and perhaps the legislature did not envision that one surety (Thompson) would become a surety serving thirty-one (31) counties in Kansas. However, the action of Thompson, Thormodsgards, and Viking Bail Bonds is permitted by K.S.A. 22-2806 and the Presiding Officer may not read into the statute prohibitions merely because of the complex contractual arrangements between the parties.

8. As stated above, the paramount factor remains that Ivan D. Thompson is the surety on these bonds. He is acting as surety pursuant to K.S.A. 22-2806 and as such is not required to be licensed as a surety as defined in K.S.A. 40-1102(d).

Conclusion

The Presiding Officer concludes that the Respondents are operating under the authority of K.S.A. 22-2806 and are not engaged in the unauthorized business of insurance nor are they required to be licensed by the Petitioner. The Petitioner's request for an order directing the Respondents to cease and desist from issuing bail bonds is not warranted as the Respondents are not conducting any unlawful acts or procedures. IT IS SO ORDERED.

The Respondents' request for cost of this action is denied as the Presiding Officer does not have statutory or regulatory authority to award cost. IT IS SO ORDERED.

Pursuant to K.S.A. 77-527, either party may appeal this Initial Order. A petition for review must be filed within 15 days from the date of this Initial Order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this Initial Order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: Kansas Insurance Department, Commissioner of Insurance, Kathleen Sebelius, 420 S.W. 9th Street, Topeka, Kansas 66612.

Edward J. Gaschler
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On 06/27, 2001, I mailed by U.S. mail, a copy of this initial order to:

Ivan D. Thompson
2400 Happy Hollow Road
Topeka, Kansas 66617.

Loren Thormodsgard Agency, Inc.
114 S.E. 8th Street
Topeka, Kansas 66603

Loren E. Thormodsgard & M. Charlene Thormodsgard
5316 S.W. 25th Terrace
Topeka, Kansas 66614

Steven W. Cavanaugh
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2942 A S.W. Wanamaker Dr., Ste. 100
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Linda Shepard, Staff Attorney
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612-1678

Edward J. Gaschler
Presiding Officer
610 SW 10th, 2nd Floor
Topeka, KS 66612

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

FACTS:

Kathleen Sebelius is currently serving her second term as Insurance Commissioner of Kansas. As Commissioner, she regulates the 1500 companies and 49,500 agents who sell nearly $10.5 billion worth of insurance products in Kansas each year.

Originally elected in 1994, Sebelius is the 23rd Insurance Commissioner of Kansas and Kansas' first woman Insurance Commissioner. She has been and continues to be a champion for consumer rights, health care reform and progressive change in state government.

Kathleen Sebelius is immediate past-President of the National Association of Insurance Commissioners.

Prior to being elected Insurance Commissioner, Sebelius was a four-term legislator in the Kansas House of Representatives from Topeka.

Commissioner Sebelius and her husband, Gary, an attorney, have two teenage sons, Ned and John.

For more information on Commissioner Sebelius and the Kansas Insurance Department, please visit us on the web: *www.ksinsurance.org.*

FAX:

TO: David Stuckman

FAX: 801) 409-4072

DATE: 3/4/02 TIME: 11:35

NUMBER OF PAGES (INCLUDING COVER): 10

FROM: Lori

PHONE: 785) 296-7810

FAX: 296-2283

E-MAIL:

MESSAGE: Viking Bail Bonds