

Criminal Procedure—Notice to Appear and Appearance Bonds; SB 473

SB 473 amends the Kansas Code of Criminal Procedure to allow a notice to appear (NTA) to serve as a valid complaint and amends law related to appearance bonds made in district courts.

Notice to Appear

Under the bill, a NTA may serve as a valid complaint when it is signed by a law enforcement officer (LEO) and meets the following criteria:

- The NTA is issued for any unclassified misdemeanor or nonperson misdemeanor [*Note: By law, an NTA must also contain the notice and address of the person detained, the crime charged, and the time and place when and where such person shall appear in court.*];
- A Memorandum of Agreement (MOA) exists between the County or District Attorney of the jurisdiction where the NTA is issued and the law enforcement agency that employs the LEO signing the complaint; and
- The NTA is in compliance with the requirements of the MOA and includes the contents for a complaint as required by law.

Compensated Surety Qualifications

The bill adds various qualifications to law specifying the requirements for a compensated surety to secure appearance bonds in district court.

Background Check; Fingerprinting

Under the Kansas Code of Criminal Procedure (Code), the chief judge of a judicial district, or their designee, approves persons or entities to act as a compensated surety in the district court. The bill allows the chief judge to require a compensated surety to submit to a state and national criminal history record check as part of either initial or continued authorization.

Fingerprints obtained for the record check shall be used to identify the individual and to determine whether such person has a criminal history record in Kansas or any other jurisdiction. The bill allows the chief judge to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for a state and national criminal history record check.

The bill allows the chief judge to use the information obtained from fingerprinting and the records check to verify the identification of the individual and to determine whether the person is qualified to act as a compensated surety in the judicial district.

Disclosure or use of any fingerprint or records check information for purposes other than those specified by the bill shall be considered a class A nonperson misdemeanor.

The bill also allows the KBI to charge a reasonable fee for conducting the records check. The applicant shall be required to pay records check fees and the fingerprinting fee.

Property Surety—Outstanding Appearance Bonds

Under the Code, a property surety executes an affidavit describing the property used to write appearance bonds. The bill specifies that limitations in law concerning total outstanding appearance bonds are calculated by considering bonds issued within Kansas.

Compensated Surety Requirements

The bill creates provisions in the Code to specify requirements of a compensated surety. Under the bill, a compensated surety shall:

- Charge a minimum appearance bond premium of 10.0 percent of the face amount of the bond;
- Only post a bond after receiving 50.0 percent of the bond premium in one of the following forms:
 - U.S. currency paid to the compensated surety prior to the execution of the bond;
 - A delivered check payable to the compensated surety when delivered and promptly deposited into a bank account;
 - A credit or debit card transaction if the compensated surety obtains prior authorization from the card issuer; or
 - A bank or wire transfer or other electronic funds transfer including, but not limited to, peer-to-peer transfer (e.g., Cash App, PayPal, Venmo) prior to the execution of the bond; and
- Be physically present when the bond is posted and sign the bond at the jail.

The bill requires a compensated surety to enter into a premium financing agreement for the remaining portion of the bond premium (at least 50.0 percent of which was paid to have bond posted). [Note: The bill provides that the bond premium shall consist of at least 10.0 percent of the total bond amount.]

Termination or Suspension

The bill allows a chief judge to terminate or suspend a compensated surety from posting bond. These reasons may include, but are not limited to:

- Filing false statements with the court;
- Failing to charge the minimum appearance bond premium as required by the bill;
- Paying a fee or rebate, or giving or promising anything of value in order to secure a settlement, compromise, remission, or reduction of the amount of any appearance bond, forfeiture, or estreatment, or to secure or delay an appearance bond to:
 - A jailer;
 - A law enforcement officer;
 - Any person who has the power to arrest or hold a person in custody; or
 - Any public official or employee;
- Paying a fee or rebate or giving or promising anything of value other than reward payments for information relating to the apprehension of fugitives to an inmate in exchange for a business referral;
- Requiring or accepting anything of value from a principal other than the appearance bond premium, except that the compensated surety may accept collateral security or other indemnity to secure the face amount of the bond;
- Intentionally failing to promptly return collateral security to the principal when they are entitled to return of the collateral;
- Knowingly employing or otherwise compensating convicted felons (unless the conviction was expunged) for any appearance bond-related work, other than reward payments relating to apprehension of a fugitive; or
- Failing to pay any forfeiture judgment within 30 days of the filing of the journal entry of judgment.

The bill allows a chief judge to investigate claims of violations of the reasons listed above. If the chief judge finds that a violation has occurred, the compensated surety may have their authorization terminated or suspended. If terminated, the bill clarifies that the chief judge must make a record as required under the Code and provide it to the surety.

Compensated Surety Continuing Education

The bill raises the limit on the annual continuing education fee charged by the Kansas Bail Agents Association from \$250 to \$300 and allows the Association to prorate course charges according to the number of hours in a particular course.

Definitions

Compensated Surety

The term “compensated surety” in the Code is amended by the bill to mean any person who or entity that is organized under Kansas law that, as surety, issues appearance bonds for compensation, posts bail for four or more persons in a calendar year, is responsible for any forfeiture, and is liable for appearance bonds written by such person’s or entity’s authorized agents. A compensated surety is either an insurance agent surety, a property surety, or a bail agent.

Under the bill, the definition is amended to add the provisions concerning posting bail for four or more persons and that a surety may be a bail agent, in addition to insurance agent surety or property surety, as found in continuing law.

Property Surety

The bill amends the definition of “property surety” to include corporations in the definition.

Appearance Bond Premium

The bill adds a definition for the term “appearance bond premium” to mean a fee charged by a compensated surety for posting an appearance bond.