

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2056**

As Amended by Senate Committee on
Corrections and Juvenile Justice

Brief*

Senate Sub. for HB 2056 would create and amend law relating to sureties and bail enforcement agents.

The bill would add new sections requiring compensated sureties to submit an application to the chief judge of the judicial district in each judicial district where such surety seeks to act as a surety and prohibiting compensated sureties from acting as a surety prior to approval of such application. "Compensated surety" would be defined as any person who or entity that is not a corporation that, as surety, issues bonds for compensation, is responsible for any forfeiture and is liable for appearance bonds written by such person's authorized agents. A "compensated surety" would be either an insurance surety or a property surety, which the bill also would define.

The bill would outline the required contents of applications for insurance agency sureties, property surety, or bail agent, and would allow each judicial district, by local rules, to require additional information from any compensated surety and establish what property is acceptable for bonding purposes. Judicial districts would be prohibited from requiring a compensated surety to apply for authorization in such judicial district more than once a year, but could require additional reporting from a compensated surety in its discretion. Further, the bill would prohibit a judicial district from declining authorization for a compensated surety based

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

solely on the type of compensated surety. The bill states its provisions would not be construed to require the chief judge of the judicial district to authorize any compensated surety to act as a surety in such judicial district if the judge finds, in such person's discretion, that such authorization is unwarranted.

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

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

Given the new distinction between compensated and uncompensated sureties, in an existing section of law, the bill would specify language requiring sureties to justify by affidavit the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all of the surety's other liabilities would apply only to uncompensated sureties.

Beginning on January 1, 2017, the bill would require each compensated surety to obtain at least 8 hours of continuing education credits each 12-month period. The chief judge in each judicial district could provide a list of topics to be covered during the continuing education classes. If the judicial district does not require an annual application, the bill would require each compensated surety or bail agent to provide a certificate of continuing education compliance to the judicial district each year.

If an authorized compensated surety does not comply with these requirements the chief judge of the judicial district could allow a conditional authorization to continue acting as a surety for 90 days. If the compensated surety does not obtain the required 8 hours within 90 days, the conditional authorization would be terminated and the compensated surety would be prohibited from acting as a surety in that judicial district. Continuing education credits used to comply with conditional authorization would not be applied toward compliance with the current or any subsequent 12-month period.

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

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

attesting that all continuing education requirements have been completed.

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

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

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

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

- Full name and business address;
- Two photographs of the applicant;
- A set of fingerprints to be submitted for a Federal Bureau of Investigation criminal history record check; and
- Employment history and criminal history.

The bill would authorize the Attorney General to conduct a state and national criminal history records check and to use information from this check to determine eligibility for a

license. The Attorney General could charge a fee to cover the cost of the background check.

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

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

The Attorney General would determine the form of the license, and the license would include the name of the licensee and a license number and date. The licensee would be required to post the license in a conspicuous place in the licensee's principal place of business and would be provided with a pocket card reflecting the license. The licensee would be required to surrender the card within five days of terminating activities or the suspension or revocation of the

license. A licensee would be required to notify the Attorney General of a change of address within 30 days.

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

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

All fees or charges received pursuant to the new provisions would be deposited in the state treasury to the credit of the Bail Enforcement Agents Fee Fund, which would be created by the bill. Moneys in the Fund would be used solely for administering and implementing the new provisions of the bill and any other law relating to the licensure and regulation of bail enforcement agents.

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

Expungement statutes would be amended to require expunged convictions to be disclosed and allow them to be considered for the purposes of determining qualifications for a bail enforcement agent license. [Note: The bill appears to extend the sunset date for the Judicial Branch surcharge from

2015 to 2017. This extension is in existing law and is included in this bill to reconcile conflicting versions of the statute.]

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

Background

HB 2056 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. As introduced, the bill amended law related to the use of a risk assessment tool for placement of offenders in community corrections programs. In the House Committee, the Executive Director of the Sentencing Commission and representatives of the Office of Judicial Administration, Riley County Community Corrections, and the Kansas Association of Counties testified in support of the bill. There was no neutral or opponent testimony.

In the Senate Committee on Corrections and Juvenile Justice, the Executive Director of the Kansas Sentencing Commission and representatives of the Kansas Community Corrections Association and the Office of Judicial Administration testified in support of the bill. The Secretary of Corrections and a representative of the Kansas Association of Counties provided written testimony supporting the bill. There was no neutral or opponent testimony.

The 2015 Senate Committee removed the original contents of HB 2056 and inserted the contents of SB 90, as

amended by the Senate Committee, after further modifying the fingerprinting requirement. The Senate Committee recommended a substitute bill to incorporate these provisions. The Senate Committee inserted the original contents of HB 2056 into HB 2051, which was enacted by the 2015 Legislature.

The bill was rereferred to the 2016 Senate Committee, which amended the substitute bill by adopting amendments suggested by the proponents of SB 90. These amendments included:

- Adjusting grounds for denial, censure, limiting, condition, suspension, or revocation of a license;
- Making unlicensed conduct as a bail enforcement agent an unconscionable act or practice under the Kansas Consumer Protection Act; and
- Requiring disclosure of expunged convictions for purposes of bail enforcement agent licensing.

The Senate Committee also added the language of SB 374, as amended by the Senate Committee of the Whole, regarding applications, authorization, justification, and continuing education for sureties.

Further background information regarding SB 90 and SB 374 is provided below.

There is no fiscal note for the substitute bill, but the fiscal note information for SB 90 and SB 374 is provided below.

SB 90 Background

SB 90 was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the KBAA.

In the Senate Committee, representatives of the KBAA and the Kansas Association of Licensed Investigators testified in support of the bill. There was no opponent or neutral testimony.

The Senate Committee adopted an amendment proposed by the Office of the Attorney General clarifying the fingerprint and background check provisions and allowing the Attorney General to charge a fee to cover the cost of the background check.

According to the fiscal note prepared by the Division of the Budget on SB 90, as introduced, the Office of the Attorney General indicates an additional 0.50 to 1.00 FTE positions could be required to handle the additional workload of processing and issuing bail enforcement agent licenses. Additional expenditures would range from \$32,387 to \$55,727 annually, dropping by approximately \$4,000 to \$5,000 in the out-years after start-up costs were paid.

The fees established by SB 90 would provide revenues and, optimally, would offset the cost of operating the program. Any fiscal effect associated with the bill was not reflected in *The FY 2016 Governor's Budget Report*.

The Office of Judicial Administration indicates SB 90 should not have a fiscal effect on the Judicial Branch, but a more precise statement of the fiscal effect on the courts cannot be determined until they have operated under the bill's provisions.

SB 374 Background

SB 374 was introduced in the Senate Committee on Corrections and Juvenile Justice at the request of a representative of KBAA. At the Senate Committee hearing on the bill, representatives of the KBAA and Tennessee Bail Agents Association appeared in support of the bill. A judge of the 29th Judicial District and two bail bondsmen were opponents. There was no neutral testimony.

The Senate Committee adopted an amendment striking “entity” from the definition of “compensated surety” and language prohibiting a judicial district from assessing a fee or charge related to a compensated surety’s application to act as a surety in such judicial district. The Committee also adopted language that would allow judges in each judicial district to provide a list of topics to be covered during continuing education classes.

The Senate Committee of the Whole adopted an amendment returning “entity” to the definition of “compensated surety” with language specifying the entity could not be a corporation. The definition of “property surety” would be amended accordingly. Finally, a reference in the continuing education section to “judges” would be changed to “the chief judge.”

The fiscal note prepared by the Division of the Budget on SB 374, as introduced, indicates passage would require additional time spent by Judicial Branch staff drafting a standard surety application form to be used by all districts as well as additional time spent by judges and clerks implementing and conducting the surety application and approval process for those judicial districts that do not currently have one in place. The process would involve accepting, reviewing, and approving surety applications; holding hearings for suspended and terminated surety authorizations; and ensuring continuing education requirements are met. Until the courts have had an opportunity to operate with the bill’s provisions in place; however, the Judicial Branch cannot accurately estimate the fiscal effect on expenditures.