

HOUSE BILL No. 2755

By Committee on Judiciary

Requested by Katie Whisman on behalf of the Kansas Bail Agents Association

2-7

1 AN ACT concerning appearance bonds; relating to release prior to trial;
2 requiring compensated sureties who post bond in municipal court to
3 comply with certain requirements; requiring a minimum bond premium
4 in district court; providing reasons for suspending or terminating
5 authorization of a compensated surety; amending K.S.A. 12-4301 and
6 22-2809b and repealing the existing sections.
7

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

9 Section 1. K.S.A. 12-4301 is hereby amended to read as follows: 12-
10 4301. (a) A person having the right to post bond for appearance shall, in
11 order to do so, execute in writing a promise to appear at the municipal
12 court at a stated time and place. Such appearance bond shall be in an
13 amount as determined by the municipal judge, ~~and such amount shall be~~
14 ~~the same regardless of the method used to secure the appearance of the~~
15 ~~accused person~~. Unless the judge makes a specific finding otherwise,
16 every bond for a person charged with an offense that would be a person
17 offense pursuant to state law shall have a condition of release prohibiting
18 the person from having contact with the alleged victim of such offense for
19 a period of at least 72 hours. Such bond may be secured by any one of the
20 following methods, and when so secured, such person shall be released
21 from custody.

22 (b) The methods of securing the appearance of an accused person are
23 as follows:

24 ~~(a)~~(1) Payment of cash, except that the municipal judge may permit
25 negotiable securities or a personal check in lieu of cash;;

26 ~~(b)~~(2) the execution of an appearance bond by ~~a~~ *an uncompensated*
27 responsible individual residing within the state of Kansas, as surety, with
28 the approval of the municipal judge;;

29 (3) *the execution of an appearance bond by a compensated surety as*
30 *defined in K.S.A. 22-2809b, and amendments thereto, who is in*
31 *compliance with the requirements of K.S.A. 22-2809a and 22-2809b, and*
32 *amendments thereto, with the approval of the municipal judge;*

33 ~~(e)~~(4) a guaranteed arrest bond certificate issued by either a surety

1 company authori-ized to transact such business within the state of Kansas,
2 or an automobile club authorized to transact business in this state by the
3 commissioner of insurance, except that such "guaranteed arrest bond
4 certificate" must be signed by the person to whom it is issued and must
5 contain a printed statement that the surety guarantees the appearance of
6 such person and, in the event of failure of such person to appear in court at
7 the time of trial, will pay any fine or forfeiture imposed upon such person
8 not to exceed an amount to be stated on such certificate-; *or*

9 ~~(d)~~(5) in lieu of giving security in the manner provided by
10 subsections (a), (b) and (c) above paragraphs (1) through (4), if the arrest
11 is for the violation of a city ordinance relating to the operation of a motor
12 vehicle, the accused person may deposit with the arresting law
13 enforcement officer or the clerk of the municipal court a valid Kansas
14 driver's license in exchange for a receipt therefor issued by the law
15 enforcement officer or the clerk of the municipal court, the form of which
16 shall be approved by the division of vehicles of the state department of
17 revenue. Such receipt shall be recognized as a valid temporary Kansas
18 driver's license authorizing the operation of a motor vehicle by the accused
19 person to the date of the hearing stated on the receipt. Such driver's license
20 and written copy of the notice to appear shall be delivered by the law
21 enforcement officer to the municipal court as soon as reasonably possible.
22 If the hearing on any such charge is continued for any reason, the
23 municipal judge may note on the receipt the date to which such hearing
24 has been continued, and such receipt shall be recognized as a valid
25 temporary Kansas driver's license until such date, but in no event shall
26 such receipt be recognized as a valid Kansas driver's license for a period
27 longer than 30 days from the date for the original hearing. Any person who
28 deposited a driver's license to secure such person's appearance, in lieu of
29 giving a bond as provided in ~~subsections (a), (b) and (c) above~~ paragraphs
30 (1) through (4), shall have such driver's license returned upon the giving of
31 the required bond pursuant to ~~(a), (b) and (c) above~~ paragraphs (1)
32 through (4) or upon final determination of the charge.

33 (c) In the event the accused person deposits a valid Kansas driver's
34 license with the municipal court and fails to appear in court on the date set
35 for appearance, or any continuance thereof, and in any event within 30
36 days from the date set for the original hearing, the municipal judge shall
37 forward the driver's license of such person to the division of vehicles with
38 an appropriate explanation attached thereto. Upon receipt of the driver's
39 license of such person the division of vehicles shall suspend such person's
40 privilege to operate a motor vehicle in this state until such person appears
41 before the municipal court, or the municipal court makes a final
42 disposition thereof, and notice of such disposition is given by the
43 municipal court to the division, or for a period not exceeding six months

1 from the date such person's driver's license is received by the division,
2 whichever is earlier.

3 (d) Any person who applies for a replacement or new driver's license
4 prior to the return of such person's original license, when such license has
5 been deposited in lieu of the giving of a bond as provided in this section,
6 shall be guilty of a misdemeanor punishable as set forth in K.S.A. 8-2116,
7 and amendments thereto.

8 Sec. 2. K.S.A. 22-2809b is hereby amended to read as follows: 22-
9 2809b. (a) As used in this section:

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

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

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

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

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

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

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

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

40 (B) a statement, made under penalty of perjury, that the applicant is a
41 resident of this state and is not prohibited by K.S.A. 22-2809a(c), and
42 amendments thereto, from acting as a surety; *and*

43 (C) a certificate of continuing education compliance in accordance

1 with subsection (f).

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

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

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

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

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

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

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

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

40 (c) A property surety authorized to act as a surety in a judicial district
41 pursuant to subsection (b) shall be allowed outstanding appearance bonds
42 *in the state of Kansas* not to exceed an aggregate amount which is 15 times
43 the valuation of the property described in subsection (b)(3). Such property

1 surety shall not write any single appearance bond that exceeds 35% of the
2 total valuation of the property described in subsection (b)(3).

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

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

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

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

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

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

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

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

22 (2) *A compensated surety ~~may~~ shall enter into a premium financing*
23 *agreement for any **unpaid minimum** appearance bond premium amount*
24 *that exceeds ~~10% of the face amount of the appearance bond.~~*

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

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

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

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

42 (2) (A) If such authorization is granted, the chief judge of the judicial
43 district, or the chief judge's designee, may terminate or suspend the

1 authorization at any time. *Reasons for terminating or suspending such*
2 *authorization include, but are not limited to:*

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

4 ~~(ii) *soliciting appearance bond services at any jail;*~~

5 ~~(iii) *failing to charge the minimum appearance bond premium as*~~
6 ~~*required by this section;*~~

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

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

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

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

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

27 ~~(ix)~~**(viii)** *failing to pay any forfeiture judgment within 30 days of the*
28 *filing of the journal entry of judgment.*

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

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

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

42 (3) *If an authorized compensated surety does not comply with the*
43 *continuing education requirements in subsection ~~(f)~~ (g), the chief judge of*

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

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

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

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

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

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

40 Sec. 3. K.S.A. 12-4301 and 22-2809b are hereby repealed.

41 Sec. 4. This act shall take effect and be in force from and after its
42 publication in the statute book.