

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 374

As Amended by Senate Committee of the Whole

Brief*

SB 374 would amend the law concerning sureties. 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 solely on the type of compensated surety. The bill states its provisions shall not be construed to require the chief judge of the judicial district to authorize any compensated surety to act as a surety in such judicial district if the judge finds, in such person's discretion, that such authorization is unwarranted.

*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>

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 eight 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 eight 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 eight 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.

Background

The bill 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 the bill, 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.