

SENATE BILL No. 248

By Committee on Federal and State Affairs

2-27

AN ACT enacting the Kansas surety recovery agents act; relating to licensure, requirements and fees of surety recovery agents; prohibiting certain acts and prescribing penalties therefor; prescribing certain duties and responsibilities of the attorney general.

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

Section 1. The provisions of this act shall be known and may be cited as the Kansas surety recovery agents act.

Sec. 2. The purpose of the Kansas surety recovery agents act is to promote, preserve and protect the public health, safety and welfare of people and their property by regulating the business and practice of fugitive recovery.

Sec. 3. As used in this act: (a) "Attorney general" means the attorney general of the state of Kansas or the attorney general's designee;

(b) "principal" means a person who has been charged with a crime and uses a surety to obtain release from custody;

(c) "provisional surety recovery agent" is a person who has completed all requirements to obtain a license as a surety recovery agent, except for training or an authorized substitute for training; and

(d) "surety recovery agent" means a person not performing the duties of a law enforcement officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a surety or bail bond agreement.

Sec. 4. (a) After the effective date of this act, no surety recovery agent shall apprehend any fugitive without holding a license issued under this act.

(b) After the effective date of this act, a surety recovery agent operating from an office not located in the state, who is not licensed by the state as a surety recovery agent must be associated with, and accompanied by, a licensed surety recovery agent before apprehending any person within the state.

Sec. 5. (a) A surety recovery agent license shall be issued or renewed for a term of two years.

(b) A provisional surety recovery agent license shall be issued for a term of nine months.

1 Sec. 6. No person may engage in the business of apprehending prin-
2 cipals without being hired by a surety as an employee, contractor or other
3 agent.

4 Sec. 7. (a) Any person desiring to engage in the business of a surety
5 recovery agent shall apply to the attorney general for a license on forms
6 prepared and furnished by the attorney general. The applicant will submit
7 the application under oath.

8 (b) The application shall include the following information: (1) Full
9 name;

10 (2) any alias name;

11 (3) date of birth and age;

12 (4) social security number;

13 (5) driver's license number;

14 (6) residence during the previous five years;

15 (7) occupation during the previous five years;

16 (8) business address during the previous five years;

17 (9) full set of fingerprints;

18 (10) photograph;

19 (11) explanation of all criminal convictions or juvenile adjudications;

20 (12) explanation of all charges for which the applicant received a
21 diversion;

22 (13) explanation of all civil actions involving the applicant arising from
23 work as a surety recovery agent;

24 (14) name and address of all sureties for whom the applicant will
25 perform surety recovery agent services; and

26 (15) additional material required by the attorney general to assure
27 compliance with this act.

28 Sec. 8. (a) Upon investigation and verification of the material re-
29 quired for licensing, and a determination that all requirements of this act
30 are met, the attorney general shall issue to the applicant a surety recovery
31 agent license.

32 (b) (1) The attorney general shall issue an identification card in a
33 form that shall include at least the following information: (A) Name of
34 the licensee;

35 (B) current photograph of the licensee;

36 (C) license number;

37 (D) date of issuance of the license;

38 (E) expiration date of the license;

39 (F) the title "surety recovery agent"; and

40 (G) any additional information the attorney general deems necessary
41 to inform the public of the status of the licensee.

42 (2) The identification card will not use the state seal, nor indicate or
43 imply the licensee acts for the state.

1 Sec. 9. A surety recovery agent must be at least 21 years of age.

2 Sec. 10. (a) As used in this act, disqualifying offenses mean: (1) Any
3 act involving illegally using, carrying or possessing a dangerous weapon;

4 (2) any act of personal violence or force on any person or property;

5 (3) any threat to commit an act of personal violence or force on any
6 person or property;

7 (4) any act constituting dishonesty or fraud;

8 (5) impersonating a law enforcement officer;

9 (6) any violation of a rule or regulation of surety recovery agents; and

10 (7) any violation of this act.

11 (b) No person shall be licensed as a surety recovery agent who has
12 been found guilty, either after a trial or as a result of a plea of guilty or
13 *nolo contendere*, of a disqualifying offense or of any other act in another
14 jurisdiction that would be a disqualifying offense if committed in this state
15 unless having been free from the jurisdiction or supervision of the city,
16 state or of the United States for not less than five years prior to the time
17 of applying for a surety recovery agent license.

18 (c) The attorney general may determine that an otherwise disquali-
19 fying offense should not be interposed as a disqualification to licensing
20 based upon the date of the conviction, the conduct of the applicant since
21 the date of the conviction and other evidence as to the applicant's char-
22 acter. The attorney general may require the applicant to submit infor-
23 mation necessary to determine whether the applicant's previous convic-
24 tions should preclude licensing as a surety recovery agent.

25 Sec. 11. (a) An applicant shall remit written consents to the attorney
26 general for federal and Kansas state criminal history records checks.

27 (b) An applicant living outside of this state within the five years pre-
28 ceding the application, shall also submit to a criminal records check in
29 the state or states in which the applicant lived during that time.

30 (c) The applicant shall be responsible for the costs imposed by the
31 federal or any state government of such criminal records checks.

32 Sec. 12. (a) A surety recovery agent shall satisfactorily complete a
33 basic course of training for surety recovery agents that is approved by the
34 attorney general. When asked to approve a course of training the attorney
35 general shall consider the following factors: (1) Sponsor of the training
36 program, such as a recognized professional organization, an accredited
37 vocational school, school district, educational institution or community
38 college or other accredited institution of higher learning;

39 (2) credentials of faculty members;

40 (3) examination requirements; and

41 (4) in the case of proposed distance learning programs, the steps
42 taken by the institution to insure completed work and examinations are
43 the applicant's own work.

1 (b) The basic course of training must consist of at least 20 hours of
2 training which includes, at a minimum, instruction in the following: (1)
3 The following areas of the law: (A) United States and Kansas constitu-
4 tional law;

5 (B) procedures for arresting defendants and surrendering defendants
6 into custody;

7 (C) civil liability;

8 (D) the civil rights of persons who are detained in custody;

9 (E) the use of force;

10 (2) procedures for field operations, including, without limitation: (A)
11 Safety and survival techniques;

12 (B) searching buildings;

13 (C) handling persons who are mentally ill or under the influence of
14 alcohol or a controlled substance; and

15 (D) the care and custody of prisoners;

16 (3) the skills required of surety recovery agents, including, without
17 limitation: (A) Writing reports, completing forms and procedures for
18 exoneration;

19 (B) methods of arrest;

20 (C) nonlethal weapons;

21 (D) the retention of weapons;

22 (E) qualifications for the use of firearms;

23 (F) defensive tactics;

24 (G) use of handcuffs;

25 (H) use of mace; and

26 (I) demeanor in the courtroom;

27 (4) principles of investigation, including, without limitation: (A) The
28 basic principles of locating defendants who have not complied with the
29 terms and conditions established by a court for their release from custody
30 or the terms and conditions of a contract entered into with a surety; and

31 (B) ethics; and

32 (5) first aid: (A) First aid used in emergencies; and

33 (B) cardiopulmonary resuscitation.

34 (c) The attorney general may accept certification from the American
35 red cross or other recognized program of first aid training and certification
36 from the American red cross, American heart association or other rec-
37 ognized program of cardiopulmonary resuscitation training as meeting the
38 requirements of subsection (b)(5).

39 (d) All training required by this act must be started and completed
40 within a period of six months, except that first aid and cardiopulmonary
41 resuscitation training may be completed within the prior two years of the
42 date of application.

43 (e) A person who has earned a degree from an accredited educational

1 institution of higher learning in criminal justice or similar curriculum or
2 completed a course of training required by a municipal, state or federal
3 law enforcement agency or a branch of the armed forces to carry out the
4 duties of a law enforcement officer is not required to complete the course
5 outlined by this section if: (1) The degree of course was completed within
6 five years prior to the date of application; or

7 (2) the degree of course was completed more than five years prior to
8 the date of application but the applicant has been working as a law en-
9 forcement officer for at least two of the previous five years prior to the
10 date of application.

11 (f) A person who has worked as a surety recovery agent for at least
12 two years prior to July 1, 2003, and has accomplished no less than 25
13 lawful recoveries, as certified by one or more sureties for whom the surety
14 recovery agent worked, must complete the training required by this act
15 before January 1, 2005. For purposes of this requirement, a surety li-
16 censed by a state other than this state may certify to the applicant's prior
17 recoveries.

18 (g) The applicant will be responsible for the cost of the training.

19 Sec. 13. (a) All surety recovery agents must maintain a policy of lia-
20 bility insurance in an amount not less than \$300,000 protecting persons
21 and property from harm, written by a company approved by the attorney
22 general.

23 (b) All surety recovery agents shall submit to the attorney general a
24 certificate of insurance annually showing the required coverage.

25 (c) The insurance required by this act will provide for notification to
26 the attorney general no less than 10 days prior to the cancellation of the
27 insurance policy or reduction in coverage below \$300,000.

28 (d) The failure to maintain the required insurance invalidates the au-
29 thority granted by a surety recovery agent license or a provisional surety
30 recovery agent license.

31 (e) Deductibles are not permitted unless the licensee submits a bond
32 to the attorney general for the purpose of serving as a source of recovery
33 for persons who receive judgments against a licensee for amounts less
34 than that covered by insurance. The bond must be in a form and provided
35 by a company acceptable to the attorney general, based upon the likeli-
36 hood that sufficient assets support the bond.

37 Sec. 14. (a) Every surety recovery agent must certify to the attorney
38 general annually, except the first year a surety recovery agent is licensed,
39 on a form provided by the attorney general that the agent has attended
40 no less than six hours of approved continuing education training in the
41 areas designated in section 12, and amendments thereto.

42 (b) When asked to approve a program of continuing education the
43 attorney general shall consider the following factors: (1) Sponsor of the

1 training program, such as an accredited vocational school, school district,
2 educational institution or community college or other accredited institu-
3 tion of higher learning;

4 (2) credentials of program presenters; and

5 (3) review of the materials to be distributed at the program for con-
6 sistency with the subject matter requirements of this act.

7 (c) Certifications of attendance at continuing education programs will
8 be submitted to the attorney general before February 1 to cover the prior
9 calendar year.

10 (d) Failure to complete the required continuing education or failure
11 to submit a certificate of attendance by February 1 of each year in which
12 a certificate is required will render the surety recovery agent license
13 invalid.

14 Sec. 15. (a) An applicant for a surety recovery agent license may ob-
15 tain a provisional surety recovery agent license by meeting all require-
16 ments for licensing as a surety recovery agent except for training required
17 by this act.

18 (b) If a person seeks a provisional surety recovery agent license, the
19 surety or sureties for whom the provisional licensee will work must submit
20 a statement acknowledging the person's employment.

21 (c) A provisional surety recovery agent may not work independent of
22 a licensed surety recovery agent.

23 (d) A provisional surety recovery agent license is limited to a period
24 of nine months.

25 (e) A person may not renew or receive a second provisional surety
26 recovery agent license.

27 Sec. 16. The attorney general shall deny a license to any applicant
28 who fails to submit the required information showing the applicant qual-
29 ifies for a license as a surety recovery agent or provisional recovery agent
30 or submits false or misleading information.

31 Sec. 17. The attorney general shall suspend, revoke or refuse to re-
32 new any license issued under this act for any of the following causes: (a)
33 Any cause for which issuance of the license could have been refused had
34 it then existed and been known to the attorney general;

35 (b) material misstatement, misrepresentation or fraud in obtaining
36 the license;

37 (c) failure to maintain required insurance;

38 (d) failure to engage in required continuing education;

39 (e) failure to report the required continuing education; and

40 (f) violation of any provision of this act.

41 Sec. 18. (a) Prior to denial of an original or renewal license applica-
42 tion or suspension or revocation of an existing license, the attorney gen-
43 eral will notify the applicant or licensee in writing of the proposed action.

1 (b) The notice will include at least the following items: (1) Nature of
2 the proposed adverse action;

3 (2) basis for believing adverse action should be taken by the attorney
4 general;

5 (3) effective date of the proposed action absent a request for a
6 hearing;

7 (4) right to request a hearing before the attorney general; and

8 (5) date by which the attorney general shall receive a request for a
9 hearing.

10 (c) (1) The attorney general may suspend a license when in the at-
11 torney general's opinion the actions complained of do not represent a
12 pattern or practice of violations of local, state or federal laws or rules or
13 regulations, applicable to surety recovery agents, and it is believed sus-
14 pension will result in corrected behavior by the licensee.

15 (2) The attorney general may revoke a license when in the attorney
16 general's opinion the actions complained of represent a pattern or prac-
17 tice of violations of local, state or federal laws or rules or regulations,
18 applicable to surety recovery agents, and it is believed suspension will not
19 result in corrected behavior by the licensee, or that the violations are too
20 serious to permit a temporary suspension of the licensee's authority to
21 act as a surety recovery agent.

22 (d) An applicant or licensee may request a hearing by submitting a
23 written request to the attorney general within 10 days of the date of the
24 notice of the proposed action. Any request received by the attorney gen-
25 eral after the 10 day period is untimely.

26 (e) If the applicant or licensee requests a hearing before the director,
27 the following procedure shall be followed: (1) The hearing will be held
28 no less than seven days from the date of receipt of the request for a
29 hearing;

30 (2) the attorney general is authorized to administer oaths to those
31 testifying;

32 (3) the applicant or licensee may question witnesses and present
33 evidence;

34 (4) the hearing will be transcribed. The transcript may be obtained
35 from the court reporter at the cost of the requesting party; and

36 (5) the attorney general will issue written findings of fact and conclu-
37 sions of law.

38 (f) Adverse decisions of the attorney general may be appealed pur-
39 suant to the provisions of the act for judicial review and civil enforcement
40 of agency actions.

41 (g) A person whose license was revoked may reapply for a license no
42 sooner than two years following the attorney general's action. An appli-
43 cation shall be treated as a new application.

1 (h) If the license expires while the attorney general considering the
2 suspension or revocation of a license, the license will be renewed, if all
3 other requirements are met, subject to the continuation of the suspension
4 or revocation process. The expiration of a license does not bar the inves-
5 tigation of any incident occurring during a period in which the person
6 was licensed.

7 (i) Following a hearing on a recommended suspension or revocation,
8 the attorney general may take any action appropriate including suspen-
9 sion, even if revocation was originally recommended, or revocation, even
10 if suspension was originally recommended. The attorney general may take
11 no action and dismiss the recommendation.

12 Sec. 19. (a) A surety recovery agent who intends to apprehend any
13 person in the state, before attempting such apprehension, shall inform
14 local law enforcement authorities. The surety recovery agent shall present
15 to the local law enforcement authorities a certified copy of the bond and
16 all other appropriate paperwork identifying the principal to be
17 apprehended.

18 (b) A surety recovery agent shall inform the local law enforcement
19 authorities that the agent is planning to enter a residence. Such agent
20 shall have a certified copy of the bond and all appropriate paperwork to
21 identify the principal.

22 Sec. 20. (a) A surety recovery agent may not enter a residence to
23 recover a principal without first demanding admittance and explaining
24 the purpose for which admittance is desired.

25 (b) A surety recovery agent forcibly entering a residence shall insure
26 the residence is secured before leaving the scene of the apprehension.

27 Sec. 21. (a) A surety recovery agent shall present the state-issued
28 identification card to any: (1) Law enforcement officer upon request;

29 (2) person from whom entry to a residence is requested; and

30 (3) principal to be apprehended by the surety recovery agent. If in
31 the reasonable judgment of the surety recovery agent the principal poses
32 a threat to the surety recovery agent's safety, or the safety of another,
33 identification of the surety recovery agent may be accomplished upon
34 apprehension.

35 (b) No person shall modify or in any way change a surety recovery
36 agent identification card issued by the state.

37 (c) No person to whom an identification card is issued by the attorney
38 general shall permit use of the card by any other person. No person who
39 was not issued an identification card by the attorney general shall use a
40 surety recovery agent identification card for any purpose.

41 Sec. 22. No security recovery agent shall wear, carry or display any
42 uniform, badge, shield or other insignia or emblems that purport to in-
43 dicate that such person is an employee, officer or agent of any state, any

1 political subdivision of any state or the United States.

2 Sec. 23. (a) The following fees shall be assessed by the attorney
3 general:

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| 4 (1) Surety recovery agent application fee | \$250 |
| 5 (2) Provisional surety recovery agent application fee | \$250 |
| 6 (3) License renewal fee | \$100 |
| 7 (4) Appeal to the attorney general | \$100 |
| 8 (5) Photo identification card | \$10 |
| 9 (6) Replacement photo identification card fee | \$10 |

10 (b) The attorney general is authorized to increase fees established by
11 this act annually, effective on May 1, by a percentage amount not to
12 exceed the consumer price index, all items, all urban consumers, pub-
13 lished by the United State department of labor, bureau of labor statistics.

14 Sec. 24. A violation of any provision of this act shall be a nonperson
15 misdemeanor. Upon conviction a person shall be sentenced to not less
16 than one day nor more than 180 days imprisonment and fined not less
17 than \$250 nor more than \$500, or both such fine and imprisonment.

18 Sec. 25. The attorney general may promulgate rules and regulations
19 necessary to carry out the provisions of this act.

20 Sec. 26. This act shall take effect and be in force from and after its
21 publication in the statute book.

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