

- SUBJECT:** Revising regulation of bail bond sureties
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton
0 nays
3 absent — Denny, Dunnam, P. Moreno
- WITNESSES:** For — Roger Moore, Bail Agents of Allegheny Casualty Co. and International Fidelity Insurance

Against — *(On original version:)* Kathy Braddock, Harris County District Attorney’s Office; Sgt. Bruce Carr, Harris County Sheriff’s Office; David L. Finney, Denton County District Attorney’s Office; Felix Michael Kubosh; Judith K. Magness, Brazos County Attorney’s Office
- BACKGROUND:** A bail bond is a cash deposit, a similar deposit or written undertaking, or a bond or other security given to guarantee the appearance of a defendant in a criminal case. A bail bond surety is a person who executes a bail bond as a surety or co-surety for another person, or who for compensation deposits cash to ensure the appearance in court of a person accused of a crime.

Occupations Code, ch. 1704, codified by the 76th Legislature in 1999, governs the powers, duties, and responsibilities of county bail bond boards and the regulation, licensing, professional requirements, and conduct of bail bond sureties.

The statute allows a board by rule to regulate solicitations or advertisement by or on behalf of license holders to protect the public from harassment, fraud, or misrepresentation. It also establishes licensing requirements. The existence of any unpaid final judgments of forfeiture on any bond executed by the agent, if the applicant is a corporation, may not bar licensure but may be considered by the board in determining whether to grant a license to the corporation with that agent.

An applicant or a license holder may appeal an order of a board denying an application for a license, renewal of a license, or revocation of a license.

DIGEST:

CSHB 2729 would alter the composition of a bail bond board to include an elected licensed bail bond surety or agent for a corporate surety in the county, or a bail bond surety or agent for a corporate surety licensed in the county who is designated by the elected surety or agent. The board annually would have to conduct a secret-ballot election to elect that member. Each person licensed in the county as a bail bond surety or agent for a corporate surety could cast one vote for each license held. The bill also would specify that the presiding officer of the board could vote on any board matter.

A board by rule could regulate solicitations or advertisements by or on behalf of bail bond sureties to protect the safety of law enforcement officers. A bail bond surety, an agent of a corporate surety, or an employee of the surety or agent could not make or benefit from unsolicited contact:

- through any means, including in person, by telephone, electronic methods, or in writing, to solicit bonding business related to a person with an outstanding arrest warrant that had not been executed, unless the bail bond surety or agent for a corporate surety had an existing bail bond on the person; or
- in person or by telephone to solicit bonding business between the hours of 9 p.m. and 9 a.m., within 24 hours after the execution of an arrest warrant on the person, or within 24 hours after a warrantless arrest.

Until payment of the final judgment, an unpaid final judgment disclosed by the applicant would bar licensure for the applicant if the applicant had not complied with sec. 1704.204(a), which requires a person to pay a final judgment on a forfeiture of a bail bond not later than the 31st day after the date of the final judgment unless a timely motion for a new trial has been filed. In that case, the person would have to pay the judgment not later than the 31st day after the date the motion was overruled, or deposit with the court cash or a supersedeas bond in the amount of the final judgment, if an appeal was filed. A supersedeas bond is a bond required of a person who petitions to set aside a judgment and from which the other party may be made whole if the action is unsuccessful.

The board would have to notify the sheriff immediately if a bail bond surety failed to pay a final judgment of forfeiture. After receiving notification, the sheriff could not accept any bonds from the bail bond surety until the surety paid the judgment. The bail bond surety's privilege to post bonds would be reinstated when the judgment was paid. The board would not have to provide notice or a hearing before notifying the sheriff.

The bill would specify that a person executing a bail bond could surrender the defendant for whom the bond was executed by:

- if the defendant was represented by an attorney, notifying the attorney of the person's intention to surrender him or her; and
- filing an affidavit with the court or magistrate before which the prosecution is pending that stated the person's intention to surrender the defendant, the reason for the surrender, and other specific information about the case.

In an appeal brought by an applicant for a license or a renewal or contesting a revocation, the board could not assert a reason on appeal for an action that differed from the reasons specified in the board's notice of hearing to suspend or revoke a license.

CSHB 2729 would specify that a bail bond surety could not hold security for the payment of a bail bond fee or to assure the principal's appearance in court for more than 30 days after the date on which the owner of the security requested return of the security in writing and submitted to the surety written evidence of the conclusion of the payment agreement or of all of the criminal cases for which the security was given.

The bill also would make nonsubstantive changes to the Occupations Code, as well as the following amendments to current law:

- the board could disapprove an application for renewal of a license only by entering an order;
- a corporation would have to make a separate deposit for each license granted to it in a county;
- records maintained by a licensee would have to be made available for inspection and copying at the board's expense on demand by the board

- and would have to be maintained at the licensee's office location in the county for not less than four years after the conclusion of the case;
- notice of a hearing to suspend or revoke a license would have to include a copy of any written complaint on which the hearing would be based; and
 - bonding business would be defined as the solicitation, negotiation, or execution of a bail bond by a bail bond surety, and final judgment would be defined as a judgment that disposes of all issues and parties in a case.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2729 would amend provisions in the Occupations Code governing the regulation of bail bond sureties to address problems and inconsistencies and to clarify ambiguities in current law.

The bill appropriately would apply additional pressure on bail bond sureties to pay final judgments of forfeiture. Failure to do so would result in a bar to renewed licensing and in other penalties, such as immediate notification of the sheriff. After receiving notification, the sheriff could not accept any bonds from the bail bond surety until the surety paid the judgment. The bail bond surety's privilege to post bonds would be reinstated when the judgment was paid. This would give bail bond sureties added incentive to satisfy the judgment. The bill would clarify what a final judgment is, in accordance with current case law.

The bill appropriately would balance the rights of bail bond sureties to solicit business with the need to protect law enforcement. Bondsmen often contact suspects to solicit business before the suspects even are served with a warrant. This practice hinders law enforcement by giving suspects advance warning and an opportunity to evade arrest. It also endangers officers by giving potentially dangerous suspects time to arm themselves and await the arrival of law enforcement. CSHB 2729 would protect peace officers by preventing bail bond sureties from contacting people with outstanding arrest warrants that had not been executed. The safety risks faced by peace officers would outweigh this minimal restriction on bail bond sureties' right to free speech.

The bill would clarify procedures for electing a licensed bail bond surety to the board and how long records would have to be maintained by bail bond sureties. It also would ensure fairness for bail bond sureties by requiring the board to disclose a copy of any written complaint on which a hearing to suspend or revoke a license was based.

Concerns about removing the court's involvement in a surrender are misplaced. A person executing a bail bond still would have to file an affidavit with the court stating the person's intention to surrender the defendant, the reason for the intended surrender, and other information about the case.

**OPPONENTS
SAY:**

It would be overly restrictive to require the board to enter a written order when denying an application for renewal of a license. Other boards in the state are not required to put their decisions in writing.

CSHB 2729 inappropriately would remove language requiring the court to authorize the surrender of a defendant by a person executing a bail bond. It is desirable to keep the court involved, because a defendant, particularly one who does not speak English, might be unaware of his or her rights. Without the court's involvement, a person executing a bail bond would be more likely to take advantage of a helpless defendant.

The bill would infringe upon bail bond sureties' First Amendment free speech rights by limiting the circumstances when they could solicit business.

NOTES:

As filed, HB 2729 differed from the committee substitute in many ways, including by:

- specifying that a final judgment is a judgment for which a timely appeal no longer may be filed, and a timely motion for a new trial was not filed or was overruled;
- providing for the annual election of an alternate licensed bail bond surety to the board;
- not specifying the circumstances when a bail bond surety could not solicit business from suspects;
- requiring the board to specify each ground for disapproval of a license renewal in its order;

- not specifying how a person executing a bail bond could surrender the defendant;
- specifying that an applicant or license holder could appeal an order by a board by filing a petition in a district court in the county or in Travis County;
- not barring licensure of a bail bond surety with an unpaid final judgment; and
- not specifying the circumstances when a bail bond surety could not hold security for the payment of a bail bond fee or to assure the defendant's appearance in court.

The companion bill, SB 1423 by Hinojosa, has been referred to the Senate Criminal Justice Committee.