

By: Talton

H.B. No. 2729

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of bail bond sureties; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1704.001, Occupations Code, is amended by amending Subdivision (4) and adding Subdivision (4-a) to read as follows:

(4) "Bonding business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety.

(4-a) "Final judgment" means a judgment that disposes of all issues and parties in a case.

SECTION 2. Section 1704.053, Occupations Code, is amended to read as follows:

Sec. 1704.053. BOARD COMPOSITION. A board consists of:

(1) the sheriff or a designee from the sheriff's office who must be the sheriff's administrator or a deputy sheriff of the rank of at least sergeant;

(2) a district judge of the county having jurisdiction over criminal matters and designated by the presiding judge of the administrative judicial district;

(3) the county judge, a member of the commissioners court designated by the county judge, or a designee approved by the commissioners court;

(4) a judge of a county court or county court at law in

1 the county having jurisdiction over criminal matters and designated  
2 by the commissioners court;

3 (5) the district attorney or an assistant district  
4 attorney designated by the district attorney;

5 (6) a licensed bail bond surety or agent for a  
6 corporate surety in the county elected under Section 1704.0535, or  
7 a bail bond surety or agent for a corporate surety licensed in the  
8 county who is designated by the elected surety or agent [~~by other~~  
9 ~~licensed bail bond sureties in the county~~];

10 (7) a justice of the peace;

11 (8) the district clerk or the clerk's designee;

12 (9) the county clerk or the clerk's designee, if the  
13 county clerk has responsibility over criminal matters;

14 (10) if appointed by the board, a presiding judge of a  
15 municipal court in the county;

16 (11) if the county's principal municipality designates  
17 a presiding judge in the municipal court system, the presiding  
18 judge or a municipal judge from the system designated by the  
19 presiding judge; and

20 (12) the county treasurer or the treasurer's designee  
21 or, if appointed by the commissioners court in a county that does  
22 not have a county treasurer, the person designated by the county  
23 commissioners court to perform the duties of the county treasurer.

24 SECTION 3. Subchapter B, Chapter 1704, Occupations Code, is  
25 amended by adding Section 1704.0535 to read as follows:

26 Sec. 1704.0535. ELECTION OF BAIL BOND SURETY BOARD MEMBER.

27 (a) The board shall annually conduct a secret ballot election to

1 elect the member of the board who serves as the representative of  
2 licensed bail bond sureties by electing a licensed bail bond surety  
3 or agent for a corporate surety board member.

4 (b) Each individual licensed in the county as a bail bond  
5 surety or agent for a corporate surety is entitled to cast one vote  
6 for each license held.

7 SECTION 4. Section 1704.054, Occupations Code, is amended  
8 by adding Subsection (c) to read as follows:

9 (c) The presiding officer may vote on any board matter.

10 SECTION 5. Section 1704.105, Occupations Code, is amended  
11 to read as follows:

12 Sec. 1704.105. LICENSED BAIL BOND SURETY LIST. (a) A board  
13 shall post in each court having criminal jurisdiction in the  
14 county, and shall provide to each local official responsible for  
15 the detention of prisoners in the county, a current list of each  
16 licensed bail bond surety and each licensed agent of a corporate  
17 ~~[the bail bond]~~ surety in the county.

18 (b) A list of each licensed bail bond surety and each  
19 licensed agent of a corporate surety in a county must ~~[may]~~ be  
20 displayed at each location where prisoners are examined, processed,  
21 or confined.

22 SECTION 6. Section 1704.108, Occupations Code, is amended  
23 to read as follows:

24 Sec. 1704.108. NOTIFICATION OF DEFAULT BY CORPORATION. A  
25 board shall promptly notify the Texas Department of Insurance if  
26 ~~[of a default by]~~ a corporation fails to pay a judgment of  
27 forfeiture as provided by Section 1704.204(a) ~~[on a financial]~~

~~obligation undertaken by the corporation in the county]~~.

SECTION 7. Section 1704.109, Occupations Code, is amended to read as follows:

Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. (a) A board by rule may regulate solicitations or advertisements by or on behalf of bail bond sureties ~~[license holders]~~ to protect:

(1) the public from:

(A) harassment;

(B) [7] fraud;

(C) [7-07] misrepresentation; or

(D) threats to public safety; or

(2) the safety of law enforcement officers.

(b) A bail bond surety, an agent of a corporate surety, or an employee of the surety or agent may not make, cause to be made, or benefit from unsolicited contact:

(1) through any means, including in person, by telephone, by electronic methods, or in writing, to solicit bonding business related to an individual with an outstanding arrest warrant that has not been executed, unless the bail bond surety or agent for a corporate surety has an existing bail bond on the individual; or

(2) in person or by telephone to solicit bonding business:

(A) that occurs between the hours of 9 p.m. and 9 a.m.; or

(B) within 24 hours after:

(i) the execution of an arrest warrant on

1 the individual; or

2 (ii) an arrest without a warrant on the  
3 individual.

4 (c) This section does not apply to a solicitation or  
5 unsolicited contact related to a Class C misdemeanor.

6 SECTION 8. Section 1704.151, Occupations Code, is amended  
7 to read as follows:

8 Sec. 1704.151. LICENSE REQUIRED. Except as provided by  
9 Section 1704.163, a person may not act as a bail bond surety or as an  
10 agent for a corporate surety in the county unless the person holds a  
11 license issued under this chapter.

12 SECTION 9. Section 1704.152(a), Occupations Code, is  
13 amended to read as follows:

14 (a) To be eligible for a license under this chapter, an  
15 individual, including an agent designated by a corporation in an  
16 application, must:

17 (1) be a resident of this state and a citizen of the  
18 United States;

19 (2) be at least 18 years of age;

20 (3) possess the financial resources required to comply  
21 with Section 1704.160, unless the individual is acting only as  
22 agent for a corporation holding a license under this chapter; and

23 (4) have, in the two years preceding the date a license  
24 application is filed:

25 (A) at least one year of continuous work  
26 experience in the bail bond business; and

27 (B) completed in person at least eight hours of

1 continuing legal education in criminal law courses or bail bond law  
2 courses that are approved by the State Bar of Texas and that are  
3 offered by an accredited institution of higher education in  
4 ~~[accredited by]~~ the state.

5 SECTION 10. Sections 1704.154(b) and (d), Occupations Code,  
6 are amended to read as follows:

7 (b) The application must:

8 (1) be in a form and contain the information  
9 prescribed by the board;

10 (2) state:

11 (A) the applicant's name, age, and address;

12 (B) if the applicant is a corporation, whether  
13 the applicant is:

14 (i) chartered or admitted to do business in  
15 this state; and

16 (ii) qualified to write fidelity, guaranty,  
17 and surety bonds under the Insurance Code;

18 (C) the name under which the bail bond business  
19 will be conducted, including a bail bond business that is conducted  
20 by an agent of a corporation;

21 (D) each place, including the street address and  
22 municipality, at which the business will be conducted; and

23 (E) the amount of cash or the cash value of a  
24 certificate of deposit or cashier's check that the applicant  
25 intends to deposit with the county treasurer if the applicant's  
26 application is approved or, if the applicant is an individual  
27 intending to execute nonexempt real property in trust to the board,

1 the value of the real property;

2 (3) if the applicant is an individual, be accompanied  
3 by a list, as required by Section 1704.155, of nonexempt real  
4 property owned by the applicant that the applicant intends to  
5 execute in trust to the board if the applicant's application is  
6 approved; and

7 (4) be accompanied by:

8 (A) the applicant's complete, sworn financial  
9 statement;

10 (B) the applicant's declaration that the  
11 applicant will comply with this chapter and the rules adopted by the  
12 board;

13 (C) three letters of recommendation, each from a  
14 person who:

15 (i) is reputable; and

16 (ii) has known the applicant or, if the  
17 applicant is a corporation, the agent designated by the corporation  
18 in the application for at least three years;

19 (D) a \$500 filing fee;

20 (E) a photograph of the applicant or, if the  
21 applicant is a corporation, of the agent designated by the  
22 corporation in the application;

23 (F) a set of fingerprints of the applicant or, if  
24 the applicant is a corporation, of the agent designated by the  
25 corporation in the application taken by a law enforcement officer  
26 designated by the board;

27 (G) if the applicant is or has been licensed

under this chapter in another county:

(i) a list of each county in which the applicant holds a license; and

(ii) a statement by the applicant ~~[that]~~, as of the date of the application, of any [the applicant has no unpaid] final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from a bail bond executed by the applicant as a surety or as an agent for a surety [of forfeiture against the applicant in any county in which the applicant holds or has held a license]; and

(H) if the applicant is a corporation, a statement by the designated agent, as of the date of the application, of any [unpaid] final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from [of forfeiture on] any bond executed by the agent as a surety or as an agent for a surety.

(d) Until payment of the final judgment, [The existence of] an unpaid final judgment disclosed under Subsection (b)(4)(G)(ii) or (b)(4)(H) bars [may not bar] licensure for the applicant unless the applicant has deposited with the court cash or a supersedeas bond in the amount of the final judgment pending:

(1) a ruling on a timely filed motion for a new trial;  
or

(2) an appeal [but may be considered by the board in determining whether to grant a license to the corporation with that agent].

SECTION 11. Section 1704.155, Occupations Code, is amended



to read as follows:

Sec. 1704.155. REAL PROPERTY LIST. A list of nonexempt real property required under Section 1704.154(b)(3) must, for each parcel listed, include:

(1) a legal description of the property that would be sufficient to convey the property by general warranty deed;

(2) a current statement from each taxing unit authorized to impose taxes on the property showing[+]

~~[(A)]~~ that there is no outstanding tax lien against the property; ~~[and]~~

(3) at the option of the applicant, either ~~[(B)]~~ the property's:

(A) net value ~~[of the property]~~ according to a current appraisal made by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or

(B) value according to a statement from the county from the county's most recent certified tax appraisal roll;

(4) ~~[(3)]~~ a statement by the applicant that, while the property remains in trust, the applicant:

(A) agrees to pay the taxes on the property;

(B) will not further encumber the property unless the applicant notifies the board of the applicant's intent to encumber the property and the board permits the encumbrance; and

(C) agrees to maintain insurance on any

1 improvements on the property against damage or destruction in the  
2 full amount of the value claimed for the improvements;

3 (5) [~~(4)~~] a statement of whether the applicant is  
4 married; and

5 (6) [~~(5)~~] if the applicant is married, a sworn  
6 statement from the applicant's spouse agreeing to transfer to the  
7 board, as a part of the trust, any right, title, or interest that  
8 the spouse may have in the property.

9 SECTION 12. Section 1704.159(a), Occupations Code, is  
10 amended to read as follows:

11 (a) After the hearing under Section 1704.158, the board  
12 shall enter an order conditionally approving the application unless  
13 [~~if~~] the board determines that a ground exists [~~does not exist~~] to  
14 deny the application. If the board determines that a ground exists  
15 to deny the application, the board shall enter an order denying the  
16 application.

17 SECTION 13. Sections 1704.160(b) and (c), Occupations Code,  
18 are amended to read as follows:

19 (b) A deposit made under Subsection (a)(1)(A) or (a)(2) may  
20 not be less than \$50,000. A corporation must make a separate  
21 deposit for each license granted to it in a county. A deposit made  
22 to a county with a population of less than 250,000 shall be placed  
23 in a fund known as a bail security fund.

24 (c) At the option of the applicant, the [~~The~~] property  
25 executed in trust under Subsection (a)(1)(B) must be valued in the  
26 amount indicated by:

27 (1) [~~on~~] an appraisal by a real estate appraiser who is

1 a member in good standing of a nationally recognized professional  
2 appraiser society or trade organization that has an established  
3 code of ethics, educational program, and professional  
4 certification program; or

5 (2) the county's most recent certified tax appraisal  
6 roll.

7 SECTION 14. Section 1704.162, Occupations Code, is amended  
8 by amending Subsection (d) and adding Subsection (g) to read as  
9 follows:

10 (d) A board shall ~~may~~ approve an application for renewal  
11 if:

12 (1) the applicant's current license is not suspended  
13 or revoked;

14 (2) the application complies with the requirements of  
15 this chapter; and

16 (3) the board does not determine that a ground exists  
17 to deny the application.

18 (g) The board may disapprove an application only by entering  
19 an order.

20 SECTION 15. Section 1704.202(d), Occupations Code, is  
21 amended to read as follows:

22 (d) The records required under this section shall be:

23 (1) made available for inspection and copying at the  
24 board's expense on demand by the board or an authorized  
25 representative of the board;

26 (2) maintained at the license holder's office location  
27 in the county; and

1           (3) maintained for not less than four years after the  
2 conclusion of the case for which the bond was given.

3           SECTION 16. Section 1704.204(a), Occupations Code, is  
4 amended to read as follows:

5           (a) A person [~~license holder~~] shall pay a final judgment on  
6 a forfeiture of a bail bond executed by the person [~~license holder~~]  
7 not later than the 31st [~~30th~~] day after the date of the final  
8 judgment unless a timely motion for a new trial has been filed. If a  
9 timely motion for a new trial or a notice of appeal has been filed,  
10 the person shall:

11                 (1) pay the judgment not later than the 31st day after  
12 the date the motion is overruled, if the motion is overruled; or

13                 (2) deposit with the court cash or a supersedeas bond  
14 in the amount of the final judgment, if an appeal is filed.

15           SECTION 17. Section 1704.207(a), Occupations Code, is  
16 amended to read as follows:

17           (a) A person executing a bail bond may [~~not~~] surrender the  
18 principal for whom the bond is executed by [~~unless~~]:

19                 (1) if the principal is represented by an attorney,  
20 notifying the principal's attorney of the person's intention to  
21 surrender the principal in a manner provided by Rule 21a, Texas  
22 Rules of Civil Procedure; and

23                 (2) filing an affidavit with the court or magistrate  
24 before which the prosecution is pending that states:

25                         (A) the person's intention to surrender the  
26 principal;

27                         (B) the court and cause number of the case;

1                   (C) the name of the defendant;  
2                   (D) the offense with which the defendant is  
3 charged;  
4                   (E) the date of the bond;  
5                   (F) the reason for the intended surrender; and  
6                   (G) that notice of the person's intention to  
7 surrender the principal has been provided as required by this  
8 subsection ~~[the person executes and files with the court having~~  
9 ~~jurisdiction over the case an affidavit stating:~~  
10                   ~~[(A) the date the bond was executed;~~  
11                   ~~[(B) the fee paid for the bond; and~~  
12                   ~~[(C) the reason for the surrender; and~~  
13                   ~~[(2) the court authorizes the surrender in writing].~~

14           SECTION 18. Subchapter F, Chapter 1704, Occupations Code,  
15 is amended by adding Section 1704.2535 to read as follows:

16           Sec. 1704.2535. FAILURE TO PAY FINAL JUDGMENT BY BAIL BOND  
17 SURETY. (a) The board or its authorized representative shall  
18 immediately notify the sheriff if a bail bond surety fails to pay a  
19 final judgment of forfeiture as provided by Section 1704.204(a).

20           (b) After receiving notification, the sheriff may not  
21 accept any bonds from the bail bond surety until the surety pays the  
22 judgment.

23           (c) The bail bond surety's privilege to post bonds is  
24 reinstated when the bail bond surety pays the judgment.

25           (d) A board is not required to provide notice or a hearing  
26 before making the notification required by this section.

27           SECTION 19. Section 1704.254(a), Occupations Code, is

amended to read as follows:

(a) Notice of a hearing to suspend or revoke a license under this chapter must:

(1) be sent by certified mail to the last known address of the license holder not later than the 11th day before the date of the hearing; ~~and~~

(2) state each alleged violation of this chapter; and

(3) include a copy of any written complaint on which the hearing will be based.

SECTION 20. Section 1704.255, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board may not assert a reason on appeal for an action by the board that differs from the reasons specified in the board's notice of hearing under Section 1704.254.

SECTION 21. Section 1704.301, Occupations Code, is amended to read as follows:

Sec. 1704.301. RETURN OF SECURITY ~~[IN EXCESS OF RISK PROHIBITED]~~. A bail bond surety ~~[license holder]~~ may not hold security for the payment of a bail bond fee or ~~and~~ to assure the principal's appearance in court for more than 30 days after the date on which the owner of the security:

(1) requests return of the security in writing; and

(2) submits to the bail bond surety written evidence of the conclusion of:

(A) the payment agreement; or

(B) all of the criminal cases for which the security was given ~~[if the amount of the security held exceeds the~~

1 ~~particular risk involved in the case]~~.

2       SECTION 22. Section 1704.303(b), Occupations Code, as  
3 amended by Chapters 1262 and 1461, 77th Legislature, Regular  
4 Session, 2001, is reenacted to read as follows:

5       (b) A person may not advertise as a bail bond surety in a  
6 county unless the person holds a license issued under this chapter  
7 by a bail bond board in that county. A person does not violate this  
8 subsection if the person places an advertisement that appears in  
9 more than one county and:

10           (1) the advertisement clearly indicates the county or  
11 counties in which the person holds a license issued under this  
12 chapter; and

13           (2) any local telephone number in the advertisement is  
14 a local number only for a county in which the person holds a license  
15 issued under this chapter.

16       SECTION 23. Section 1704.202(c), Occupations Code, is  
17 repealed.

18       SECTION 24. The changes in law made by this Act regarding  
19 the composition or election of a county bail bond board do not  
20 affect the entitlement of a member serving on a board immediately  
21 before September 1, 2003, to continue to serve and function as a  
22 member of the board for the remainder of the member's term. Those  
23 changes in law apply only to a member appointed or elected on or  
24 after September 1, 2003.

25       SECTION 25. (a) Sections 1704.159, 1704.160, and 1704.162,  
26 Occupations Code, as amended by this Act, apply only to an  
27 application filed on or after the effective date of this Act. An

1 application filed before the effective date of this Act is governed  
2 by the law in effect on the day the application was filed, and the  
3 former law is continued in effect for that purpose.

4 (b) Section 1704.254, Occupations Code, as amended by this  
5 Act, applies only to a notice that occurs on or after the effective  
6 date of this Act. A notice that occurs before the effective date of  
7 this Act is governed by the law in effect on the day the notice  
8 occurs, and the former law is continued in effect for that purpose.

9 (c) Section 1704.255, Occupations Code, as amended by this  
10 Act, applies only to an appeal filed on or after the effective date  
11 of this Act. An appeal filed before the effective date of this Act  
12 is governed by the law in effect on the day the appeal was filed, and  
13 the former law is continued in effect for that purpose.

14 SECTION 26. (a) Section 1704.303, Occupations Code, as  
15 amended by this Act, applies only to an offense committed on or  
16 after the effective date of this Act.

17 (b) An offense committed before the effective date of this  
18 Act is covered by the law in effect when the offense was committed,  
19 and the former law is continued in effect for that purpose.

20 (c) For purposes of this section, an offense is committed  
21 before the effective date of this Act if any element of the offense  
22 occurs before that date.

23 SECTION 27. This Act takes effect September 1, 2003.