

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 adding Section (4-a) to read as follows:

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

(A) a timely appeal may no longer be filed; and

(B) a timely motion for a new trial was not filed or, if a timely motion for a new trial was filed, the motion has been overruled.

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;

1           (4) a judge of a county court or county court at law in  
2 the county having jurisdiction over criminal matters and designated  
3 by the commissioners court;

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

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

9           (7) a justice of the peace;

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

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

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

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

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

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

25          Sec. 1704.0535. ELECTION OF BAIL BOND SURETY BOARD MEMBER;  
26 ALTERNATE MEMBER. (a) The board shall annually conduct a secret  
27 ballot election to elect the member of the board who serves as the

1 representative of licensed bail bond sureties by electing:

2 (1) a licensed bail bond surety or agent for a  
3 corporate surety board member; and

4 (2) an alternate licensed bail bond surety or agent  
5 for a corporate surety board member.

6 (b) Each individual licensed in the county is entitled to  
7 cast one vote for each position in the election.

8 (c) The alternate board member chosen under Subsection  
9 (a)(2) shall serve on the board when the primary member is absent  
10 from a board meeting.

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

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

14 SECTION 5. Section 1704.105, Occupations Code, is amended  
15 to read as follows:

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

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

26 SECTION 6. Section 1704.108, Occupations Code, is amended  
27 to read as follows:

1           Sec. 1704.108. NOTIFICATION OF DEFAULT BY CORPORATION. A  
2 board shall promptly notify the Texas Department of Insurance if  
3 ~~[of a default by]~~ a corporation fails to pay a judgment of  
4 forfeiture before the 31st day after the date of a final judgment  
5 ~~[on a financial obligation undertaken by the corporation in the~~  
6 ~~county]~~.

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

9           Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. A board by  
10 rule may regulate solicitations or advertisements by or on behalf  
11 of license holders to protect:

- 12                 (1) the public from:  
13                         (A) harassment;  
14                         (B) [7] fraud;  
15                         (C) [7-or] misrepresentation; or  
16                         (D) threats to public safety; or  
17                 (2) the safety of law enforcement officers.

18           SECTION 8. Section 1704.151, Occupations Code, is amended  
19 to read as follows:

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

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

26           (a) To be eligible for a license under this chapter, an  
27 individual, including an agent designated by a corporation in an

1 application, must:

2 (1) be a resident of this state and a citizen of the  
3 United States;

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

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

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

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

12 (B) completed at least eight hours of continuing  
13 legal education in criminal law courses or bail bond law courses  
14 that are approved by the State Bar of Texas and that are offered by  
15 an accredited institution of higher education in [~~accredited by~~]  
16 the state.

17 SECTION 10. Section 1704.154(b), Occupations Code, is  
18 amended to read as follows:

19 (b) The application must:

20 (1) be in a form and contain the information  
21 prescribed by the board;

22 (2) state:

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

24 (B) if the applicant is a corporation, whether  
25 the applicant is:

26 (i) chartered or admitted to do business in  
27 this state; and

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

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

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

8 (E) the amount of cash or the cash value of a  
9 certificate of deposit or cashier's check that the applicant  
10 intends to deposit with the county treasurer if the applicant's  
11 application is approved or, if the applicant is an individual  
12 intending to execute nonexempt real property in trust to the board,  
13 the value of the real property;

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

19 (4) be accompanied by:

20 (A) the applicant's complete, sworn financial  
21 statement;

22 (B) the applicant's declaration that the  
23 applicant will comply with this chapter and the rules adopted by the  
24 board;

25 (C) three letters of recommendation, each from a  
26 person who:

27 (i) is reputable; and

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

(D) a \$500 filing fee;

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

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

(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 letter dated not later than the 90th day after the date of the application and provided to the applicant from the board of each of the counties stating whether the applicant is in good standing ~~[statement by the applicant that, as of the date of the application, the applicant has no unpaid final judgments 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 of any unpaid final judgments of forfeiture on any bond executed by the agent.

SECTION 11. Section 1704.155, Occupations Code, is amended to read as follows:

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

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

6           (2) a current statement from each taxing unit  
7 authorized to impose taxes on the property showing[÷

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

10          (3) [and (B)] the property's:

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

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

19          (4) [÷] a statement by the applicant that, while the  
20 property remains in trust, the applicant:

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

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

25           (C) agrees to maintain insurance on any  
26 improvements on the property against damage or destruction in the  
27 full amount of the value claimed for the improvements;



1           (5) [~~(4)~~] a statement of whether the applicant is  
2 married; and

3           (6) [~~(5)~~] if the applicant is married, a sworn  
4 statement from the applicant's spouse agreeing to transfer to the  
5 board, as a part of the trust, any right, title, or interest that  
6 the spouse may have in the property.

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

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

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

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

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

25           (1) [~~on~~] an appraisal by a real estate appraiser who is  
26 a member in good standing of a nationally recognized professional  
27 appraiser society or trade organization that has an established

code of ethics, educational program, and professional certification program; or

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

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

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

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

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

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

(g) The board may disapprove an application only by entering an order and specifying each ground for the disapproval in the order.

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

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

(1) made available for inspection on demand by the board or an authorized representative of the board;

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

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

SECTION 16. Section 1704.253, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) After notice and hearing as provided by Section 1704.254, a board shall revoke a license if[+]

~~[(1) the license holder fails to pay a judgment in accordance with Section 1704.204; and~~

~~[(2)]~~ the amount of security maintained by the license holder under Section 1704.160 is insufficient to pay the judgment.

(c) A board shall immediately suspend a license if the license holder fails to pay a final judgment of forfeiture not later than the 30th day after the date of the final judgment. A board is not required to provide notice or a hearing before suspending a license under this subsection. The board shall immediately reinstate the license on full payment of the judgment.

SECTION 17. 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 18. Section 1704.255, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as

1 follows:

2 (a) An applicant or a license holder may appeal an order of a  
3 board denying an application for a license or renewal of a license,  
4 or suspending or revoking a license, by filing a petition in a  
5 district court in the county or in a district court in Travis County  
6 not later than the 30th day after the date the person receives  
7 notice of the denial, suspension, or revocation.

8 (c) The board may not assert a reason on appeal for an action  
9 by the board that differs from the reasons specified in the board's:

10 (1) order denying or disapproving an application under  
11 Section 1704.159 or Section 1704.162; or

12 (2) notice of hearing under Section 1704.254.

13 SECTION 19. Section 1704.303(b), Occupations Code, as  
14 amended by Chapters 1262 and 1461, 77th Legislature, Regular  
15 Session, 2001, is reenacted to read as follows:

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

21 (1) the advertisement clearly indicates the county or  
22 counties in which the person holds a license issued under this  
23 chapter; and

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

27 SECTION 20. Sections 1704.202(c), 1704.207, and 1704.301,

1 Occupations Code, are repealed.

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

9       SECTION 22. (a) Sections 1704.159, 1704.160, and 1704.162,  
10 Occupations Code, as amended by this Act, apply only to an  
11 application filed on or after that date. An application filed  
12 before the effective date of this Act is governed by the law in  
13 effect on the day the application was filed, and the former law is  
14 continued in effect for that purpose.

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

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

25       SECTION 23. (a) Section 1704.303, Occupations Code, as  
26 amended by this Act, applies only to an offense committed on or  
27 after the effective date of this Act.

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

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

7           SECTION 24. This Act takes effect September 1, 2003.