

Act 417 of the 1989 Regular Session.

Act 417

SB104

By: Senator Wilson

"AN ACT TO AMEND ARKANSAS CODE, TITLE 17, CHAPTER 17, TO REGULATE THE BAIL BOND BUSINESS; TO AMEND ARKANSAS CODE, TITLE 16, CHAPTER 84, RELATING TO BAIL; TO AMEND ARKANSAS CODE 23-90-104 AND 27-50-610 TO CONFORM REFERENCES IN THE SECTIONS TO THIS ACT; TO REPEAL VARIOUS SECTIONS OF THE ARKANSAS CODE; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code, Title 17, Chapter 17, is hereby amended by adding the following new sections:

"SUBCHAPTER 3. GENERAL PROVISIONS.

17-17-301. Definitions. As used in this chapter, unless the context otherwise requires:

- (1) 'Department' means the Arkansas Insurance Department;
- (2) 'Commissioner' means the Commissioner of Insurance;
- (3) 'Insurer' means any surety company which has qualified to transact surety business in this state;
- (4) 'Bail bond or appearance bond' means a bond for a specified monetary amount which is executed by the defendant and a qualified licensee under this chapter and which is issued to a court, magistrate, or authorized officer as security for the subsequent court appearance of the defendant upon his release from actual custody pending the appearance.
- (5) 'Licensee' means a professional bail bond company or a professional bail bondsman.
- (6) 'Professional bail bondsman' means an individual who is a resident of this state and who acts through authority of a professional bail bond company in pledging a bail bond as security in a judicial proceeding.
- (7) 'Professional bail bond company' means an individual who is a resident of this state, an Arkansas firm, partnership or corporation, or a foreign corporation registered and authorized to conduct business in the State of Arkansas that pledges a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

17-17-302. Penalties. Any person who is found guilty of violating any of the provisions of this chapter shall upon conviction be fined not more than one thousand dollars (\$1,000) for each offense or imprisoned for not more than one (1) year, or both.

17-17-303. Civil and criminal proceedings. The venue for any criminal or civil proceeding filed for any violation of this chapter shall be in the county wherein the violation occurred.

17-17-304. Exemption. This chapter shall not affect the negotiation through a licensed broker or agent for, nor the execution or delivery of, an undertaking of bail, executed by an insurer for its insured under a policy of automobile insurance or of liability insurance upon the automobile of the

insured.

17-17-305. Prohibitions. No professional bail bondsman, or professional bail bond company, court or law enforcement officer, shall:

(1) Suggest or advise the employment of or name for employment any particular attorney to represent his principal.

(2) Solicit business or advertise for business in or about any place where prisoners are confined or in or about any court.

(3) Suggest or advise the engagement of any bail bond company or professional bail bondsman to underwrite a bail bond;

(4) Enter a police station, jail, sheriff's office, or other place where persons in custody of the law are detained for the purpose of obtaining employment as a professional bail bondsman or professional bail bond company, without having been previously called by a person so detained, or by some relative or other authorized person acting for or in behalf of the person so detained. Whenever such entry occurs, the person in charge of the facility shall be given and promptly record the mission of the licensee and the name of the person calling the licensee and requesting him to come;

(5) Pay a fee or rebate or give or promise anything of value to:

(A) A jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or to hold in custody; or

(B) Any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof;

(6) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(7) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf;

(8) (A) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety;

(B) Attempt to obtain settlement or dismissal of a case;

(C) Give or attempt to give any legal advice to one on whose bond he is surety; or

(9) Accept anything of value from a principal except the premium, provided that the licensee shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. The collateral security or other indemnity required by the licensee must be reasonable in relation to the amount of the bond.

17-17-306. Authority of department. The department shall have full power and authority to administer the provisions of this chapter, and to that end, to adopt, promulgate, and enforce rules and regulations necessary and proper to effectuate and enforce the purposes and provisions of this chapter.

17-17-307. Premium limits. (a) The premium or compensation for giving bond or depositing money or property as bail on any bond shall be ten percent (10%) except that the amount may be rounded up to the nearest five dollar (\$5.00) amount.

(b) The minimum compensation for giving bond or depositing money or property as bail on any bond shall be not less than twenty-five dollars (\$25.00).

(c) If a bail bond or appearance bond, issued by a licensee under this chapter, must be replaced with another bail bond or appearance bond because of the licensee's violation of any provision of the laws of this state or any rule, regulation or order of the commissioner, the licensee who violated the provision and who caused the replacement to be required shall pay all the premium amount for the replacement bond, in an amount not to exceed the amount

of the original bond, without any contribution from the respective defendant or principal.

17-17-308. Collateral - Receipt required. When a licensee accepts collateral, he shall give a prenumbered written receipt for it, and this receipt shall give in detail a full account of the collateral received.

17-17-309. Bail bonds shall be written on numbered forms. The commissioner shall assign numbers for forms to professional bail bond companies and shall prescribe the method of affixing the numbers to the forms. Each professional bail bond company shall file a bail bond report quarterly to the commissioner. The report shall include the following information on each bail bond:

- (1) the assigned number of the bond and current status of the bond whether pending disposition or exonerated;
- (2) to whom the bond was written;
- (3) the date the bail bond was written;
- (4) the defendant and the charges against the defendant;
- (5) the court;
- (6) the amount of the bail bond;
- (7) the portion of the bail bond that is secured and the unsecured portion.

17-17-310. The maximum amount of unsecured bond commitment allowed for a professional bail bond company shall not exceed one hundred thousand dollars (\$100,000) for each twenty-five thousand dollars (\$25,000) of the letters of credit or certificates of deposits filed with the commissioner by the professional bail bond company. A professional bail bond company may increase the limit by filing additional irrevocable letters of credit or certificates of deposit with the commissioner.

17-17-311. The chief law enforcement officers of any facility having individuals or prisoners in their custody shall post in plain view in the facility housing those individuals or prisoners a list provided by the circuit clerk. The list prepared by the circuit clerk and approved by the circuit court shall contain the names of professional bail bondsmen who register with the circuit clerk for the purpose of being included on the list. Professional bail bondsmen shall be included on the list in the order in which they initially register with the clerk. The list provided by the circuit clerk and approved by the court shall include the name of the professional bail bondsman, the company the bail bondsman represents, and the bail bondsman's office address and phone number.

SUBCHAPTER 4. LICENSING.

17-17-401. Licenses required. (a) No person shall engage in bail bond business without first having been licensed as provided in this chapter.

(b) A professional bail bondsman shall not execute or issue an appearance bond in this state without holding a valid appointment from a professional bail bond company and without attaching to the appearance bond an executed and numbered power of attorney referencing the professional bail bond company.

(c) An insurer shall not execute an undertaking of bail without being licensed as a professional bail bond company.

(d) A professional bail bond company shall not engage in the bail bond business:

(A) Without having been licensed as a professional bail bond company under this chapter; and

(B) Except through an agent licensed as a professional bail bondsman under this chapter.

(e) A professional bail bond company shall not permit any unlicensed person to solicit or engage in the bail bond business in the company's behalf, except for individuals who are employed solely for the performance of clerical, stenographic, investigative, or other administrative duties which do not require a license under this chapter and whose compensation is not related to or contingent upon the number of bonds written.

17-17-402. Applications. (a) Every applicant for professional bail bondsman license or a professional bail bond company license shall apply on forms furnished by the commissioner.

(b) The application of a professional bail bondsman shall be accompanied by a duly executed power of attorney issued by the professional bail bond company for whom the professional bail bondsman will be acting. Upon issuance of the license, a professional bail bondsman shall not issue an appearance bond exceeding the monetary amount for each recognizance which is specified in and authorized by the power of attorney filed with the department until the department receives a duly executed power of attorney from the professional bail bond company evidencing or authorizing increased monetary limits or amounts for the recognizance.

(c) An application for a professional bail bond company license shall be accompanied by proof that the applicant is an Arkansas partnership, firm or corporation, a foreign corporation registered and authorized to conduct business in the State of Arkansas, or an individual who is a resident of the state. A corporation shall file proof that its most recent annual franchise tax has been paid to the Secretary of State.

(d) (1) At the time of application for every professional bail bond company license there shall be paid to the commissioner for the company license a fee of one thousand dollars (\$1,000). Each applicant for a professional bail bondsman license shall pay the commissioner a license fee of one hundred dollars (\$100) at the time of application; except that if the applicant is also an applicant, as an individual, for a professional bail bond company license, then the applicant shall not be required to pay a license fee for licensure as a professional bail bondsman but shall comply with all other requirements for licensure as a professional bail bondsman.

(2) License fees shall be payable in full on a yearly basis regardless of the date of issuance.

17-17-403. Character references. Each applicant for a professional bail bondsman license shall file with the commissioner:

(1) written statements from at least three (3) persons who know his character;

(2) his fingerprint impressions submitted by a local law enforcement agency to the Arkansas State Police; and

(3) such other proof as the commissioner may require that he is competent, trustworthy, financially responsible, of good personal and business reputation, and has not been convicted of a felony or any offense involving moral turpitude.

17-17-404. Examination. (a) In order to determine the competence of each applicant for a professional bail bondsman license, the commissioner shall require every individual to submit to, and to pass to the satisfaction of the commissioner, a written examination to be prepared by the commissioner and appropriate to the transaction of bail bond business.

(b) Such examination shall be held in a location and at such times as the commissioner shall determine.

(c) Every individual applying to take a written examination shall, at the time of applying therefor, pay to the commissioner a nonrefundable examination fee of twenty-five dollars (\$25.00).

(d) If the application is approved, and if the nonrefundable examination fee is paid, an examination permit will be issued to the applicant. The permit will be valid for a period of ninety (90) days from date of issuance. If the applicant does not schedule and appear for examination within that ninety (90) day period, the permit shall expire and the applicant may be required to file a new application, and shall pay another nonrefundable examination fee of twenty-five dollars (\$25.00) before issuance of another examination permit to the applicant.

(e) If the applicant appears for examination but fails to pass the examination, the applicant may apply for reexamination. The reexamination fee shall be a nonrefundable fee of fifteen dollars (\$15.00). The commissioner may require a waiting period of eight (8) weeks before reexamination of an applicant who twice failed to pass previous similar examinations.

17-17-405. Letter of credit or certificate of deposit required.

(a) An applicant for a professional bail bond company license shall file with the commissioner an irrevocable letter of credit from an Arkansas chartered bank or a federally chartered bank in Arkansas or a certificate of deposit. The letter of credit or certificate of deposit shall be approved by the commissioner as to form and sufficiency and shall be conditioned upon faithful performance of the duties of the license. The minimum amount for any professional bail bond company initially licensed on or before July 1, 1989, shall be twenty-five thousand dollars (\$25,000). The minimum amount for any professional bail bond company initially licensed after July 1, 1989, shall be one hundred thousand dollars (\$100,000). Professional bail bond companies and professional bail bondsmen who were licensed under Chapter 17, Subchapter 2 of the Arkansas Code prior to the effective date of this act shall only be required to file or have on file with the Commissioner of Insurance a letter of credit or certificate of deposit approved by the commissioner as to form and sufficiency, in a minimum amount of five thousand dollars (\$5,000.00), conditioned upon the faithful performance of the duties of the licensee, provided they do not exceed the maximum amount of unsecured bond commitments as provided in Arkansas Code 17-17-310.

(b) No letter of credit or certificate of deposit shall be subject to termination or cancellation by either party in less than sixty (60) days after the giving of written notice thereof to the other parties and to the commissioner.

(c) No termination or cancellation shall affect the liability of the surety or sureties on a bond incurred prior to the effective date of termination or cancellation.

(d) (1) If during the term of the letter of credit or certificate of deposit any licensee shall be guilty of misconduct or malfeasance in his dealings with any court or magistrate or officer or with any person or company in connection with any deposit or bail bond, the commissioner may maintain a civil action on the letter of credit or certificate of deposit, or may maintain an administrative action on any certificate of deposit. The commissioner may recover for the use and benefit of the person or persons aggrieved, a maximum amount of ten thousand dollars (\$10,000). The provisions of this subdivision shall be in addition to all other remedies available to the aggrieved person and nothing in this subdivision shall be construed as limiting the liability of a professional bail bond company or a professional bail bondsman.

(2) The commissioner may suspend the license of such licensee until such time as the commissioner recovers the full amount allowable or

recovers for the benefit of the person(s) aggrieved, the amount of loss or injury sustained pursuant to subdivision (d) (1) above, and until such time as the

licensee has filed with the commissioner an additional letter of credit or certificate of deposit in the required amount. The commissioner shall promptly notify said licensee as provided in subdivision (e) (2) below.

(e) (1) When a final civil judgment for court-ordered bond forfeitures is entered as to a bail bond issued by the licensee by a court of competent jurisdiction in this state and the judgment is not paid within ninety (90) days thereafter, the court may send a copy of such judgment, duly certified by the clerk of such court, to the commissioner and after having given proof to the commissioner of service of process on the licensee in accordance with present laws governing service of process on defendants in other civil actions. The commissioner may promptly make a claim on the surety for payment of the allowable amount of such licensee's letters of credit on behalf of said court or shall withdraw the allowable amount of such licensee's certificate(s) of deposit and shall transmit to the clerk of such court so much of said securities as are allowable. The commissioner shall honor such judgments from the respective courts up to the limits set out in subdivision (d) (1) of this section.

(2) Upon receipt of such judgment and proof of notice of service on the licensee, the commissioner may suspend the license of such licensee until such time as the judgment is paid or otherwise satisfied and until such time as the licensee has filed with the commissioner another letter of credit or certificate of deposit in the required amount. The commissioner shall promptly notify the licensee in writing by certified mail of the claims upon the licensee's letter of credit or certificates of deposit and shall also include a copy of the commissioner's order of suspension.

(3) If the allowable amount of the letter of credit or certificate of deposit filed with the commissioner is not sufficient to pay or otherwise satisfy the judgments as to bail bonds issued by the professional bail bond company in subsection (a) above, the commissioner may promptly make a claim against the professional bail bond company on behalf of said court.

(f) In the event a professional bail bond company fails to file with the commissioner the additional letter of credit or certificate of deposit to maintain such license within ninety (90) days from the effective date of the commissioner's order of suspension as provided in subdivisions (d) (2), (e) (2) or (e) (3) above, the commissioner shall cancel the license of such licensee and shall promptly notify such licensee as provided in subdivision (e) (2) above.

(g) Upon the nonrenewal, cancellation, or revocation of any license hereunder, the commissioner will release to the licensee the qualifying bond(s) or certificate(s) of deposit filed with the commissioner only upon receipt of written documentation from all the courts in all the counties in which the licensee engaged in business that all bonds issued by such licensee have been exonerated, and that no unpaid bond forfeitures remain outstanding, and that all civil judgments as to forfeitures on bonds issued by the licensee have been paid in full.

17-17-406. Duties of commissioner and clerks. (a) Before issuance of a license under the provisions of this chapter, every applicant for a license shall satisfy the commissioner as to Arkansas residency, trustworthiness and competence, as applicable, and shall otherwise comply with the conditions and qualifications set forth in this chapter.

(b) (1) The commissioner may refuse to issue any license to an applicant who fails to comply with the provisions of this chapter or rule or regulation of the commissioner.

(2) The commissioner may refuse to issue any such license to any applicant that has made a material misrepresentation in the application for such license.

(c) Upon the approval and issuance of any license provided for under this chapter, the commissioner shall give written notice to the sheriff and circuit clerk of each county in the state.

(d) Upon revocation or suspension of license, the commissioner shall give written notice to that effect to the sheriff and circuit clerk in each county in the state.

(e) The sheriff and circuit clerk in each county shall maintain a complete record of registrations, revocations, and suspensions.

(f) Annually, the commissioner shall furnish the sheriffs and circuit clerks with a list of renewal licenses.

17-17-407. Expiration and renewal. (a) Every license issued pursuant to this chapter shall be for a term expiring on December 31 following the date of its issuance, and it may be renewed for the ensuing calendar year upon the filing of a renewal application.

(b) The commissioner may refuse to renew a license for any cause for which issuance of the original license could have been refused or for the licensee's violation of any of the provisions of this chapter or the rules and regulations of the commissioner.

(c) Every licensee shall be required to file a renewal application, in the form and subject matter of which shall be prescribed by the commissioner.

(d) At the time of application for renewal of a professional bail bond company license, there shall be paid to the commissioner for the company's renewal license a fee of one thousand dollars (\$1,000). Each professional bail bondsman shall pay a fee of one hundred dollars (\$100) for renewal of the license except that if the applicant for renewal also holds a professional bail bond company license, then the applicant shall not be required to pay a renewal fee for a professional bail bondsman license.

17-17-408. (a) The commissioner shall investigate any alleged violation of this chapter.

(b) Any person may file a complaint stating facts constituting an alleged violation of this chapter. The complaint shall be signed under penalty of perjury.

(c) All hearings held under this chapter shall be conducted in the same manner as hearings held by the Insurance Commissioner under Arkansas Code 23-61-301 et seq.

17-17-409. Suspension - Review. (a) The commissioner may suspend for up to twelve (12) months, or revoke or refuse to continue any license issued pursuant to the provisions of this chapter if, after notice and hearing, the commissioner determines that the licensee or any member of a company which is so licensed has:

(1) Violated any provision of, or any obligation imposed by, this chapter or any lawful rule, regulation or order of the commissioner or has been convicted of a felony or any offense involving moral turpitude;

(2) Made a material misstatement in the application for license, in the application for renewal license, or in the financial statement which accompanies the application or renewal application for license as a professional bail bond company;

(3) Committed any fraudulent or dishonest acts or practices or demonstrated his incompetency or untrustworthiness to act as such licensee;

(4) Charged or received, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by law;

(5) Required as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(6) Signed, executed, or issued bonds with endorsements in blank, or prepared or issued fraudulent or forged bonds or power of attorney; or

(7) Failed in the applicable regular course of business to account for and to pay premiums held by the licensee in a fiduciary capacity to the professional bail bond company or other person entitled thereto; or

(8) Failed to comply with the provisions of the laws of this state, or rule, regulation or order of the commissioner for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) The acts or conduct of any professional bail bondsman who acts within the scope of the authority delegated to him shall also be deemed the act or conduct of the professional bail bond company for which the professional bail bondsman is acting as agent.

(c) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner may in his discretion request that formal charges be filed against the violator and that penalties set out in Arkansas Code 17-17-302 be imposed.

(d) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of a license and that the license has been suspended within the previous twenty-four (24) months, then the commissioner shall revoke the license.

(e) The commissioner may not again issue a license under this chapter to any person or entity whose license has been revoked.

(f) If the commissioner determines that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in his order, a summary suspension of a license issued pursuant to this chapter may be ordered pending an administrative hearing before the commissioner, which shall be promptly instituted.

(g) If a professional bail bond company license is so suspended or revoked, no member of such company, or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation, unless the commissioner determines upon substantial evidence that such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

(h) The action of the commissioner in issuing or refusing to issue or in suspending or revoking any license shall be subject to review by the Circuit Court of Pulaski County, Arkansas, upon filing of an action therefor within thirty (30) days after the issuance of written notice by the commissioner of the action taken.

17-17-410. If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner in his discretion, and in lieu of suspension or revocation, may impose upon the licensee an administrative penalty in an amount not to exceed one thousand dollars (\$1,000)."

SECTION 2. Special provisions for previous license.

(a) Any person who held a license pursuant to Arkansas Code, 17-17-201 et seq., on the effective date of this Act may continue to engage in the bail bond business without licensure under this subchapter for a period of sixty (60) days after the effective date of this Act without being deemed guilty of a violation of Arkansas Code 17-17-401 et seq.

(b) Any individual who held a license under 17-17-201 et seq. on the effective date of this act and who applies for a license under Arkansas Code

17-17-401 et seq. within ninety (90) days after the effective date of this act shall not be required to take an examination as provided in this chapter.

(c) Any person who held a license pursuant to Arkansas Code 17-17-201 et seq. shall be entitled to a credit on the license fee required by this Act. The credit shall be a proportion of the fee paid under 17-17-205 or 17-17-207, based on the number of whole months remaining in the calendar year.

SECTION 3. Arkansas Code 23-90-104 is hereby amended to read as follows:
"23-90-104. Applicability - Exceptions.

This chapter shall apply to all kinds of direct insurance written by insurers licensed to transact insurance in this state, but shall not be applicable to the following:

- (1) Life, annuity, health, or disability insurance;
- (2) Mortgage guaranty, financial guaranty, or other form of insurance offering protection against investment risks;
- (3) Bail bonds or appearance bonds as defined in or otherwise referenced in Arkansas Code, Title 17, Chapter 17;
- (4) Credit insurance;
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance; and
- (8) Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk."

SECTION 4. Arkansas Code 27-50-610 is hereby amended to read as follows:

"27-50-610. Issuance of bond card. A professional bail bond company as defined in 17-17-301 et seq., a qualified surety, pursuant to 27-50-611 and 27-50-612, and an automobile club or association, as defined in 23-77-101 - 23-77-109, may issue a bond card to a person licensed as an operator or chauffeur which shall constitute evidence of the undertaking of bond by the company to assure the appearance in court for the offense charged of a person arrested or issued a traffic citation for a motor vehicle accident or traffic law violation up to and including the amount in dollars stated upon the face of the bond card."

SECTION 5. Arkansas Code, Title 16, Chapter 84, is hereby amended to add the following new sections:

"SUBCHAPTER 3.

16-84-301. Definitions. As used in this chapter, unless the context otherwise requires:

- (1) 'Admission to bail' means an order from a competent court or magistrate that the defendant be discharged from actual custody on bail and fixing the amount of the bail;
- (2) 'Professional bail bondsman' means an individual licensed as a professional bail bondsman by the Insurance Commissioner pursuant to Arkansas Code 17-17-401 et seq.
- (3) 'Professional bail bond company' means a person holding a professional bail bond company license issued by the Insurance Commissioner pursuant to Arkansas Code 17-17-401 et seq.
- (4) 'Surety' means the person who becomes the surety for the appearance of the defendant in court; and
- (5) 'Taking of bail' or 'Take bail' means the acceptance by a person

authorized to take bail of the undertaking of a sufficient surety for the appearance of the defendant according to the terms of the undertaking, or that the surety will pay to the court the sum specified. 'Taking of bail' or 'take bail' shall not include the fixing of the amount of bail and no person other than a competent court or magistrate shall fix the amount of bail.

16-84-302. Who may take bail. (a) The following may take bail:

- (1) a competent court, clerk of the court or magistrate;
- (2) a sheriff or deputy sheriff with respect to any person committed to the common jail of the county;
- (3) any police officer designated by a municipal police department with respect to any person committed to a municipal jail;
- (4) a law enforcement officer making an arrest as authorized under Arkansas Code 16-81-109.

(b) A constable shall not take bail.

16-84-303. Qualification of surety. (a) The surety shall be: (1) a professional bail bondsman acting through a professional bail bond company; or (2) a resident of the state, owner of visible property, over and above that exempt from execution, to the value of the sum in which bail is required, and shall be worth that amount after the payment of the surety's debts and liabilities.

(b) (1) The person or persons offered as surety shall be examined on oath in regard to their qualifications as surety, and any officer authorized to take bail is authorized to administer the oath, reduce the statements on oath to writing, and require the person offered as surety to sign the statement. Other proof may also be taken in regard to the sufficiency of the surety. Prior to submission to the court or magistrate, the statement shall also be signed by the sheriff or chief of police in the jurisdiction where the defendant is charged.

(2) Proof that the surety is a professional bail bondsman shall be deemed sufficient proof of the sufficiency of the surety and the surety may be accepted by all courts in this state or by any officer of the court authorized to take bail.

(c) No person shall be taken as surety unless the court or magistrate is satisfied, from proof and examination on oath, of the sufficiency of the person according to the requisitions of subsection (b) of this section.

(d) Where more than one (1) person is offered as surety, they shall be deemed sufficient if, in the aggregate, they possess the qualifications required.

16-84-304. There shall be no rules, regulations or requirements enacted by any judge, magistrate, sheriff or other officer of the court, requiring any professional bail bondsman or professional bail bond company to post any sum of security in addition to that required by the Commissioner of Insurance pursuant to Arkansas Code 17-17-405 as a requirement for acceptance or writing bail bonds.

16-84-305. Responsibility of officer taking bail.

(a) The officer who takes bail shall be officialy responsible for the sufficiency of the surety if taken other than through a professional bail bondsman.

(b) If the surety is not a professional bail bondsman, the officer shall file a statement with the court describing the property of the surety upon which the sufficiency of the surety is based. The description of the property shall include the value of the property. The statement shall also be signed by the sheriff or chief of police in the jurisdiction where the defendant is

charged.

(c) The officer who takes bail shall give a prenumbered written receipt for the collateral. The receipt shall give in detail a full account of the collateral received.

(d) An officer who takes bail shall not be liable for any unsecured bond ordered by a judicial officer under Rule 9.2 (b) (i) or (ii) of the Arkansas Rules of Criminal Procedure.

16-84-306. Attorneys and officers not to be sureties. No attorney, solicitor, or counselor at law or in equity, clerk, sheriff, or other person concerned in the execution of any process, shall become a personal guarantor or surety in any criminal proceeding.

16-84-307. Form of bond. (a) The undertaking of the surety, other than by a professional bail bondsman, shall be substantially as follows:

'A.B., being in custody, charged with the offense of (naming or briefly describing it), and being admitted to bail in the sum of dollars, we C.D., of (stating his place of residence), and E.F., of (stating his place of residence), hereby undertake that the above named A. B. shall appear in the court on the day of its ...term to answer said charge, and shall at all times render himself amenable to the orders and process of said court in the prosecution of said charge, and, if convicted, shall render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the appropriate court the sum of dollars.'

(b) If the surety is a professional bail bondsman, the undertaking of the surety shall be in a form prescribed by the regulations of the Insurance Commissioner.

16-84-308. Bonds not void for want of form. No prosecution, appeal, nonresident, or attachment bond, nor any other statutory bonds of any party, plaintiff, or defendant in any court of justice, in this state, nor any recognizance in any criminal cause in this state, shall be declared null and void for the want of form, if the intent of the bond can be plainly deduced from the body of the bond or recognizance.

16-84-309. Irregularity of bail bond or recognizance.

(a) No bail bond or recognizance shall be deemed to be invalid by reason of any variance between its stipulations and the provisions of this chapter, or of the failure of the magistrate or officer to transmit or deliver the bail bond or recognizance at the times provided in this subchapter, or of any other irregularity, so that it is made to appear that the defendant was legally in custody, charged with a public offense, and that he was discharged therefrom by reason of the giving of the bond or recognizance, and that it can be ascertained from the bond or recognizance that the surety undertook that the defendant should appear before a magistrate for the trial thereof.

(b) (1) If no day is fixed for the appearance, or an impossible day, or a day in vacation, the bond or recognizance, if for his appearance before a magistrate, shall be considered as binding the defendant so to appear and surrender himself into custody for an examination of the charge in twenty (20) days from the time of his giving the bond or recognizance.

(2) The bond or recognizance, if for his appearance for trial in court, shall be considered as binding the defendant to appear and surrender himself into custody on the first day of the next term of the court which shall commence more than ten (10) days after the giving of the bond or

recognizance.

16-84-310. Bail before conviction. Before conviction, the defendant may be admitted to bail:

- (1) for his appearance before a magistrate for an examination of the charge, where the offense charged is a misdemeanor;
- (2) for his appearance in the court to which he is sent for trial;
- (3) for his appearance to answer an indictment which has been found against him; or
- (4) for his appearance in a penal action.

16-84-311. Bail during trial. (a) During the trial of an indictment for a misdemeanor, the defendant may remain on bail.

(b) However, for a felony when a defendant is upon bail, he may remain upon bail or be kept in actual custody as the court may direct. If the defendant remains on bail, any surety's liability shall be exonerated unless the surety has agreed to remain as the surety until final judgment is rendered.

16-84-312. Entering of recognizance on court minutes. All recognizances required or authorized to be taken in any criminal proceeding, in open court, by any court of record shall be entered on the minutes of the court, and the substance thereof shall be read to the person recognized.

16-84-313. Application for bail. (a) If the defendant is committed to jail, and the application for bail is made to a magistrate, or judge of the circuit court during vacation, it must be by a written petition, signed by the defendant or his counsel, briefly stating the offense for which he is committed and naming the persons offered as surety.

(b) In all other cases, the application may be made orally to the court or magistrate.

16-84-314. Surrender of defendant. (a)(1) At any time before the forfeiture of their bond, the surety may surrender the defendant, or the defendant may surrender himself, to the jailer of the county in which the offense was committed.

(2) However, the surrender must be accompanied by a certified copy of the bail bond to be delivered to the jailer, who must detain the defendant in custody thereon as upon a commitment and give a written acknowledgment of the surrender.

(3) The surety shall thereupon be exonerated.

(b) For the purpose of surrendering the defendant, the surety may obtain from the officer having in his custody the bail bond or recognizance a certified copy thereof, and thereupon at any place in the state may arrest the defendant, or by his written endorsement thereon, authorize any person over the age of twenty-one (21) years to do so.

(c) The surety may arrest the defendant without the certified copy.

(d) If the surety has good cause for surrendering the defendant and has complied with the provisions herein in surrendering the defendant, there shall be no requirement that the surety return part or all of the premium paid for the bail bond.

16-84-315. Deposit of money in lieu of bail. Notwithstanding any rule of criminal procedure to the contrary:

(1)(A) Whenever the defendant is admitted to bail in a specified sum, he may deposit the sum with the county or city treasurer in the county or city in which the trial is directed to be had and take from the treasurer a certificate of the deposit, upon delivering which to the officer in whose

custody he is, he shall be discharged.

(B) After bail has been taken, a deposit may in like manner be made of the sum mentioned in the bail bond, which shall exonerate the surety.

(2) Where money is deposited, the county treasurer shall hold and pay the money according to the orders of the court having jurisdiction to try the offense, and he and his sureties shall be liable for the money on their official bond.

(3) Upon judgment being rendered against a defendant for fine and costs, the court rendering judgment may order any money deposited agreeably to this section to be applied to the payment thereof. This subdivision shall not apply to a bail bond of a bail bondsman.

16-84-316. Recommitment after bail or deposit of money. (a) The court in which a prosecution for a public offense is pending may, by an order, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail, or deposited money in lieu thereof, in the following cases:

(1) When by having failed to appear, a forfeiture of bail or of the money deposited has been incurred;

(2) When the court is satisfied that his surety, or either of them, is dead, or insufficient, or has moved from the state;

(3) Upon an indictment being found for an offense not bailable.

(b) Upon the order being made, the clerk shall issue process for the arrest and recommitment of the defendant. If the order is made on account of either of the cases mentioned in subdivision (a)(1) or (a)(2) of this section, the defendant shall be admitted to bail as upon his first commitment, in a sum to be fixed by the court and named in the process for his arrest.

SUBCHAPTER 4.

16-84-401. Action on Bond. (a) If the defendant fails to appear for trial or judgment, or at any other time when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court may direct the fact to be entered on the minutes, and shall issue an order requiring the surety to appear, on a date set by the court not less than ninety (90) days nor more than one hundred twenty (120) days after the issuance of the order, to show cause why the sum specified in the bail bond or the money deposited in lieu of bail should not be forfeited. The order shall also require the officer who was responsible for taking of bail to appear unless: (1) the surety is a bail bondsman; or (2) the officer accepted cash in the amount of bail.

(b) The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant.

(c) If the defendant is surrendered, arrested or good cause is shown for his failure to appear before judgment is entered against the surety, the court shall exonerate a reasonable amount of the surety's liability under the bail bond.

(d) If the defendant has not surrendered or been arrested prior to judgment against the surety, the bail bond or money deposited in lieu of bail may be forfeited.

(e) If before judgment is entered against the surety, the defendant is located in another state, and the location is known the appropriate law enforcement officers shall cause the arrest of the defendant and the surety shall be liable for the cost in returning the defendant to the court in an amount not to exceed the face value of the bail bond.

16-84-402. Disposition of deposit. Where money is deposited in

lieu of bail, after the forfeiture and final adjournment of the court, the treasurer shall pay the sum deposited to the credit of the school fund.

16-84-403. Certain absences excused. (a) No forfeiture of any appearance or bail bond shall be rendered in any case where a sworn statement of a licensed court-appointed physician is furnished the court showing that the principal in the bond is prevented from attending by some physical or mental disability, or where a sworn affidavit of the jailer, warden, or other responsible officer of a jail or penitentiary in which the principal is being detained shall be furnished the court, or a sworn affidavit of any officer in charge is furnished the court showing that the principal in the bond is prevented from attending due to the fact that he is being detained by a force claiming to act under the authority of the federal government which neither the state nor the surety could control.

(b) The appearance or bail bond shall remain in full force and effect until the principal is physically or mentally able to appear or until a detainer against the principal is filed with the detaining authority."

SECTION 6. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. Repealer. The following provisions are hereby repealed:

- (1) Arkansas Code 17-17-101 through 17-17-108 and 17-17-201 through 17-17-208 pertaining to the regulation of the bail bond business;
- (2) Arkansas Code 16-84-101 through 16-84-115 and 16-84-201 through 16-84-206 pertaining to bail generally;
- (3) Arkansas Code 23-63-206(a) (4) pertaining to insurers writing bail bonds or appearance bonds; and
- (4) Arkansas Code 16-83-107 which authorized a coroner to take bail.

SECTION 8. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws on the regulation of the bail bond business and bail generally are confusing and have been applied in an inconsistent manner; that there is an urgent need for the revision of laws pertaining to bail and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 8, 1989
