

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Fitch

SENATE BILL 505

"AN ACT TO AMEND ACT 400 OF 1971, AS AMENDED, THE SAME BEING
ARKANSAS STATUTES ANNOTATED SECTIONS 43-734 THROUGH 43-747,
AS TO BAIL BONDSMEN; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 1 of Act 400 of 1971, the same being Arkansas Statute 43-734, is hereby amended to read as follows:

"Section 1. The following definitions as used in this Act shall have the following meaning:

- (a) 'Department' shall mean the Department of Insurance.
- (b) 'Commissioner' shall mean the Commissioner of Insurance.
- (c) 'Insurer' shall mean any domestic, foreign or alien surety company which has qualified to transact surety business in this State.
- (d) 'Bail Bond or Appearance Bond' shall mean a bond for a specified monetary amount which is executed by the defendant and a qualified licensee under this Act and which is issued to a court, magistrate, or officer as security for the subsequent court appearance of the defendant upon his release from actual custody pending such appearance.
- (e) 'Bail Bondsman' shall mean a limited surety agent or a professional bail bondsman as hereafter defined.
- (f) 'Limited Surety Agent' shall mean any individual who is a resident of this State and is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and receives or is promised money or other things of value therefor.
- (g) 'Professional Bail Bondsman' shall mean an individual who is a resident of this State and who pledges any type of property as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

(h) 'Professional Bail Bond Company' shall mean any person who is a resident of this State, or an Arkansas firm, partnership, or corporation who through its agents pledges any type of property as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value."

SECTION 2. Section 3 of Act 400 of 1971, the same being Arkansas Statute 43-736, is hereby amended to read as follows:

"(a) An insurer shall not execute an undertaking of bail without having qualified to transact surety business in this State, and an insurer shall not engage in the writing of bail bonds except by and through a limited surety agent.

(b) A limited surety agent shall not execute or issue an appearance bond in this State without holding a valid appointment from a licensed surety insurer and without attaching to the appearance bond an executed and numbered power of attorney referencing such surety insurer.

(c) A professional bail bond company shall not engage in the bail bond business without having been licensed as a 'professional bail bond company' under this Act, and shall not engage in said business except through an agent licensed as a professional bail bondsman under this Act. Provided, in the case of an individual proprietorship where the individual owner personally conducts all solicitation, negotiation, or effectuation of bail bonds himself and employs or engages no agent to act for him in this activity, it will be sufficient for said individual proprietor to be licensed only as a professional bail bondsman.

(d) A bail bondsman shall not permit any person not so licensed to solicit or engage in the bail bond business in his behalf, except for individuals employed solely for the performance of clerical, stenographic, investigative, or other administrative duties which do not require a license under this Act and if the employee's compensation is not related to or contingent upon the number of bonds written."

SECTION 3. Section 4 of Act 400 of 1971, as amended, the same being Arkansas Statute 43-737, is hereby amended to read as follows:

"Section 4. (1) (a) Every limited surety agent, professional bail bondsman, and professional bail bond company shall apply for a license on

forms furnished by the Commissioner. Before issuance of a license hereunder every applicant therefor shall satisfy the Commissioner as to Arkansas residency, trustworthiness and competence as applicable and shall otherwise comply with the conditions and qualifications hereinafter set forth.

(b) The Commissioner may refuse to issue any such license upon reasonable grounds as the Commissioner may determine, and may refuse to issue any such license to any applicant who fails to comply with the provisions of this Act or rule or regulation of the Commissioner. In addition, the Commissioner may refuse to issue any such license:

(i) to any individual who is or to any individual whose spouse is regularly or frequently employed by a court of law or a public law enforcement agency, or to a professional bail bond company having a member, officer, director, or stockholder who is regularly or frequently employed by a court of law or a public law enforcement agency;

(ii) to any individual who is an attorney licensed by the State of Arkansas or an employee of any such attorney, or to a professional bail bond company having a member, officer, director, or stockholder who is an attorney licensed by the State of Arkansas or an employee of any such attorney;

(iii) to any individual who, or firm, partnership, or corporation which has made a material misrepresentation in the application for such license, or to any individual who or firm, partnership, or corporation which has made a material misrepresentation in the financial statement which accompanies the application for license as a professional bail bondsman or professional bail bond company; or

(iv) to any elected State, county, or municipal official.

(2) (a) At the time of application for every professional bail bondsman and limited surety agent license hereunder, there shall be paid to the Commissioner for each individual applicant a fee of Five Hundred Dollars (\$500) per license.

(b) At the time of application for every professional bail bond company license hereunder, there shall be paid to the Commissioner for the company license and for one qualifying professional bail bondsman a fee of Five Hundred Dollars (\$500), and for each additional professional bail bondsman a fee of Five Hundred Dollars (\$500).

(c) The applicant shall indicate the county or counties in this State in

which the applicant desires to be registered as a bail bondsman, or professional bail bond company. The payment of the license fee shall permit the applicant to be registered in five (5) counties. For each additional county, the applicant shall pay a nonrefundable fee of Ten Dollars (\$10.00).

(3) (a) For purposes of determining if a license should be issued, every individual hereunder shall file with the Commissioner the following:

- (i) written statements from at least three (3) persons who know his character;
- (ii) his fingerprint impressions submitted by a local law enforcement agency to the Arkansas State Police;
- (iii) that he is competent and trustworthy;
- (iv) that he is financially responsible.
- (v) that he is of good personal and business reputation;
- (vi) that he has not been convicted of a felony or any offense involving moral turpitude; and
- (vii) such other proof or information as the Commissioner may require.

(b) Every applicant for a professional bail bondsman or a professional bail bond company license hereunder shall file with the Commissioner a current financial statement on a form provided by the Department.

(4) (a) The Commissioner shall, in order to determine the competence of each applicant for license hereunder, require every person to submit to and 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. Such examination shall be held in a location and at times as the Commissioner shall determine. Every individual applying to take any written examination shall at the time of applying therefor pay to the Commissioner a nonrefundable application fee of Twenty-five Dollars (\$25.00).

(b) If the application is approved, and if the nonrefundable application 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 application fee of Twenty-five Dollars (\$25.00) before issuance of another examination permit to the applicant.

(c) If the applicant appears for examination but fails to pass such exam-

ination, the applicant shall pay a nonrefundable reexamination 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.

(5) (a) Every applicant for a limited surety agent's license shall file with the Commissioner a qualifying bond issued by a surety insurer which is not affiliated with the agent's appointing company or certificate of deposit, approved by the Commissioner as to form and sufficiency, in the amount of \$15,000.00 conditioned upon the faithful performance of the duties of such licensee.

(b) Every applicant for a professional bail bondsman license and for a professional bail bond company license shall file with the Commissioner a qualifying bond or certificate of deposit, approved by the Commissioner as to form and sufficiency, in the amount of \$25,000.00 conditioned upon the faithful performance of the duties of such licensee.

(c) Every individual who is licensed as a limited surety agent on the effective date of this Act shall be required to file with the Commissioner upon making application for license renewal an additional qualifying bond or certificate of deposit, approved by the Commissioner as to form and sufficiency, in the amount of not less than \$5,000.00 per year until such time as the total amount of such bonds or certificates of deposit which the licensee has on deposit with the Commissioner reaches \$15,000.00. Thereafter, the licensee shall have on file and maintain unimpaired with the Commissioner the qualifying bonds or certificates of deposit in the amount of \$15,000.00.

(d) Every individual who is licensed as a professional bail bondsman on the effective date of this Act, and every person, firm, partnership, or corporation who is licensed as a professional bail bond company on the effective date of this Act shall be required to file with the Commissioner upon making application for license renewal an additional qualifying bond or certificate of deposit, approved by the Commissioner as to form and sufficiency, in the amount of not less than \$5,000.00 per year until such time as the total amount of such bonds or certificates of deposit which the licensee has on deposit with the Commissioner reaches \$25,000.00. Thereafter the licensee shall have on file and maintain unimpaired with the Commissioner the qualifying bonds or certificates of deposit in the amount of \$25,000.00.

(e) No such qualifying bond 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; and no such termination or cancellation shall affect the liability of the surety or sureties on such bond or certificate of deposit incurred prior to the effective date of such termination or cancellation.

(f) (i) If during the term of such bond or certificate of deposit such licensee shall be guilty of misconduct or malfeasance in his dealings with any court or magistrate or officer or with any person or corporation or corporations in connection with any deposit or bail bond, the Commissioner may maintain an action on such qualifying bond or withdraw such certificate of deposit in the name of the people of this State and or recover for the use and benefit of the person or persons aggrieved the amount of loss or injury sustained by such person or persons by reason of such misconduct or malfeasance up to the limit of the bond(s) or certificate(s) of deposit, inclusive of interest and costs.

(ii) The Commissioner shall suspend the license of such licensee until such time as the Commissioner recovers the full amount thereof or recovers for the benefit of the person(s) aggrieved the amount of loss or injury sustained pursuant to subsection (i) above, and until such time as the licensee has filed with the Commissioner another qualifying bond or certificate of deposit in the required amount. The Commissioner shall promptly notify said licensee as provided in subsection (g) (ii) below.

(g) (i) When a final judgment for court-ordered bond forfeitures is entered as to a bail bond issued by a professional bail bondsman or by a professional bail bond company by a court of competent jurisdiction in this State and the judgment is not paid within ninety (90) days thereafter, the court shall send a copy of such judgment, duly certified by the clerk of such court, to the Commissioner. The Commissioner shall promptly make a claim on the surety for such licensee's qualifying bond(s) on behalf of said court or shall withdraw such licensee's certificate(s) of deposit and shall transmit to the clerk of such court so much of said securities as shall be necessary to satisfy said judgment. The Commissioner shall honor such judgments from the respective courts up to the limit of the licensee's qualifying bond(s) or certificate(s) of deposit.

(ii) Upon receipt of such judgment, the Commissioner shall 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 qualifying bond or certificate of deposit in the required amount. The Commissioner shall promptly notify said licensee in writing by certified mail of the claims upon the licensee's qualifying bond or certificates of deposit and shall also include a copy of the Commissioner's order of suspension.

(iii) If the qualifying bond or certificate of deposit filed with the Commissioner as required for the license of a professional bail bond company is not sufficient to pay or otherwise satisfy the judgments as to bail bonds issued by the professional bail bond company in subsection (i) above, the Commissioner shall, as to the individual professional bail bondsman who issued such forfeited bond or bonds for the professional bail bond company which he was licensed to represent, promptly make a claim on the surety for such individual's qualifying bond on behalf of said court or shall withdraw such individual licensee's certificate of deposit and shall transmit to the clerk of such court so much of said securities as shall be necessary to satisfy said judgment. The Commissioner shall suspend the license of such professional bail bondsman until such time as the judgment is paid or otherwise satisfied and until such time as this licensee has filed with the Commissioner another qualifying bond or certificate of deposit in the required amount. The Commissioner shall promptly notify such professional bail bondsman as provided in subsection (ii) above.

(h) In the event a professional bail bondsman or a professional bail bond company fails to file with the Commissioner the additional qualifying bond 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 subsections (f)(ii), (g)(ii), (iii) above, the Commissioner shall cancel the license of such licensee and shall promptly notify such licensee as provided in subsection (g)(ii) above.

(i) 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 was registered 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.

(6) The application of a limited surety agent shall be accompanied by a duly executed power of attorney issued by the insurer appointing him to act as such limited surety agent. Upon issuance of the license, a licensed limited surety agent 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 surety insurer evidencing or authorizing such increased monetary limits or amounts for the recognizance."

SECTION 4. Section 5 of Act 400 of 1971, as amended, the same being Arkansas Statute 43-738, is hereby amended to read as follows:

"Section 5. Every professional bail bond company required to be licensed hereunder shall apply and qualify in the same manner as provided in Section 4 of this Act for bail bondsmen including the posting of a bond or certificate of deposit. Provided, that if the applicant is a firm, partnership or corporation, proof of financial responsibility, character and reputation as required by Section 4, including a showing of the absence of conviction of a felony or any offense involving moral turpitude prior to application for such license, must be made with respect to every member, stockholder, officer and director of such firm, partnership or corporation."

SECTION 5. Section 7 of Act 400 of 1971, as amended, the same being Arkansas Statute 43-740, is hereby amended to read as follows:

"Section 7. (a) The Commissioner may, upon notice and after a hearing, suspend for up to twelve (12) months, or revoke, or refuse to continue any such license issued pursuant to the provisions of this Act if, after notice and hearing as specified in this Section, he determines that the licensee or any member of a firm, partnership or corporation which is so licensed has:

(1) violated any provision of, or any obligation imposed by this Act, the Insurance Code of this State, any lawful rule, regulation, or order of the Commissioner, or has violated any other laws of this State; or

(2) made a material misstatement in the application for the 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 bondsman or professional bail bond company; or

(3) committed any fraudulent or dishonest acts or practices, or

demonstrated his incompetency or untrustworthiness to act as such licensee; or

(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; or

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

(6) signed, executed, or issued bonds with endorsements is blank, or prepared or issued fraudulent or forged bonds or powers 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 surety insurer, or 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; or

(9) failed to comply with such reasonable terms as the Commissioner may determine.

(b) The acts or conduct of any limited surety agent or professional bail bondsman shall also be deemed the act or conduct of the insurer or professional bail bond company for which said limited surety agent or 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 impose upon the licensee an administrative penalty in the amount of Three Hundred Dollars (\$300.00) per violation, or if the Commissioner has found wilful misconduct or wilful violation on the part of the licensee, One Thousand Dollars (\$1,000.00) per violation. The administrative penalty may, in the Commissioner's discretion, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee for any transaction related to the proceeding against such licensee.

(d) The Commissioner may not again issue a license under this Act to any person or entity whose license has been revoked.

(e) 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 Act may be ordered pending an administrative hearing before the

Commissioner, which shall be promptly instituted.

(f) If the license of a firm, partnership or corporation is so suspended or revoked, no member of such firm or partnership, 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.

(g) The action of the Commissioner in issuing or refusing to issue, in suspending or revoking any such 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."

SECTION 6. Section 8 of Act 400 of 1971, as amended, the same being Arkansas Statute 43-741, is hereby amended to read as follows:

"Section 8. (a) Every license issued pursuant to this Act shall be for a term expiring on the 31st day of December following the date of its issuance and may be renewed for the ensuing calendar year upon the filing of a renewal application.

(b) The Commissioner may refuse to renew any license if, in his judgment, such refusal will best promote the interests of the people of this State. The Commissioner may refuse to renew any license for any cause for which issuance of the original license could have been refused under Section 4, or for the licensee's violations of any of the provisions of Sections 7 or 10 of this Act, or for the licensee's violations of any of the provisions of this Act or the Department's rules and regulations.

(c) Every such licensee shall be required to file a renewal application, and where applicable, a current financial statement, on or before the 1st day of December of each year, the form and subject matter of which shall be prescribed by the Commissioner. At the time of application for renewal of a license, there shall be paid to the Commissioner for each individual applicant for a professional bail bondsman and limited surety agent license a fee of Five Hundred Dollars (\$500.00). 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 and for one qualifying pro-

fessional bail bondsman a fee of Five Hundred Dollars (\$500.00), and for each additional professional bail bondsman listed on the company's renewal license a fee of Five Hundred Dollars (\$500.00). The renewal applicant shall indicate the county or counties in this State in which the renewal applicant desires to be registered as a bail bondsman or professional bail bond company. The payment of the renewal license fee shall permit the renewal applicant to be registered in five (5) counties. For each additional county, the renewal applicant shall pay a nonrefundable fee of Ten Dollars (\$10.00).

(d) Requests for renewal of any such license and payment of the renewal fee received by the Commissioner after December 1 of each year and prior to the next following January 1 may be accepted by the Commissioner if accompanied by a renewal fee in twice the amount otherwise required. If such renewal license request and payment of the renewal fee is received after January 1 as specified above, such licensee will be required to apply as if he were a new applicant for a license under Section 4, including but not limited to filing a new application, payment of the license fee in twice the amount otherwise required, payment of a nonrefundable application fee, and submitting to and passing the written examination."

SECTION 7. Section 9 of Act 400 of 1971, as amended, the same being Arkansas Statute 43-742, is hereby amended to read as follows:

"Section 9. (a) The premium or compensation for giving bond or depositing money or property as bail on any bond of up to \$20,000 shall not exceed ten percent (10%), and on any amount of bond in excess of \$20,000, the premium or compensation shall not exceed six percent (6%). Provided, that the maximum compensation for giving bond or depositing money or property as bail on any bond shall be not less than twenty-five dollars (\$25.00).

(b) In the event any bail bond or appearance bond issued by any licensee under this Act has to be replaced with another bail bond or appearance bond due to the licensee's violation of any provision of the laws of this State or rule or regulation or order of the Commissioner, the licensee who violated any provision of this Act and who caused such replacement to be required shall pay all the premium amount for said replacement bond without any contribution from the respective defendant or principal."

SECTION 8. Any Section or provision of this Act held by a court to be

invalid or unconstitutional will not affect the validity of any other Section or provision of this Act.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

