

## **IC 27-10-2**

### **Chapter 2. General Provisions**

#### **IC 27-10-2-1**

##### **Administration of article; rules; employees**

Sec. 1. (a) The commissioner:

- (1) shall administer this article, which regulates bail agents, recovery agents, and sureties; and
- (2) may adopt rules to enforce this article.

(b) The commissioner may employ and discharge employees, examiners, counsel, and other assistants as necessary and shall prescribe their duties and their compensation.

*As added by P.L.261-1985, SEC.1. Amended by P.L.224-1993, SEC.5.*

#### **IC 27-10-2-2**

##### **Prima facie evidence**

Sec. 2. Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the commissioner, or any record of the commissioner authenticated under the hand of the commissioner by the seal of the commissioner's office shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

*As added by P.L.261-1985, SEC.1.*

#### **IC 27-10-2-3**

##### **Undertakings; validity; defect of form or other irregularity; expiration**

Sec. 3. (a) An undertaking is valid if it states:

- (1) the court where the defendant is to appear;
- (2) the amount of the bail; and
- (3) that it was made before an official legally authorized to take the bond.

(b) A surety remains liable on an undertaking despite:

- (1) any lack of the surety's qualifications as required by section 4 of this chapter;
- (2) any other agreement that is expressed in the undertaking;
- (3) any failure of the defendant to join in the undertaking; or
- (4) any other defect of form or record, or any other irregularity, except as to matters covered by subsection (a).

(c) Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This section does not apply to cases in which a bond has been declared to be forfeited and the surety and bail agent have been notified as described in section 12 of this chapter.

*As added by P.L.261-1985, SEC.1. Amended by P.L.355-1989(ss), SEC.1; P.L.105-2010, SEC.6.*

#### **IC 27-10-2-4**

##### **Qualifications of surety**

Sec. 4. Every surety for the release of a person on bail shall be qualified as:

(1) an insurer as defined and meeting the qualifications prescribed in IC 27-1-5-1, and represented by a bail agent as defined in and meeting the qualifications prescribed in this article; or

(2) a person who:

(A) has reached the age of eighteen (18) years;

(B) is a citizen of the United States;

(C) has been a bona fide resident of Indiana for at least one (1) year immediately preceding the execution of the bond;

(D) is related to the person for whom release on bail is sought within the third degree of affinity; and

(E) owns real or tangible personal property in Indiana with a net asset value that is acceptable to the proper authority approving the bond.

*As added by P.L.261-1985, SEC.1. Amended by P.L.224-1993, SEC.6.*

#### **IC 27-10-2-5**

##### **Surrender of defendants**

Sec. 5. (a) Any time before there has been a breach of the undertaking in any type of bail and cash bond, the surety may surrender a defendant, or the defendant may surrender, to the official to whose custody the defendant was committed at the time bail was taken or to the official into whose custody the defendant would have been given if committed.

(b) A defendant shall be surrendered without the return of premium for the bond if the defendant has been guilty of:

(1) changing address without notifying the defendant's bail agent or surety;

(2) concealing one's self;

(3) leaving the jurisdiction of the court without the permission of the defendant's bail agent or surety or the court; or

(4) violating the defendant's contract with the bail agent or surety in a way that does harm to the bail agent or the surety or violates the defendant's obligation to the court.

*As added by P.L.261-1985, SEC.1. Amended by P.L.355-1989(ss), SEC.2; P.L.224-1993, SEC.7.*

#### **IC 27-10-2-6**

##### **Surrender of defendants; detention; exoneration of sureties**

Sec. 6. (a) The person desiring to make a surrender of the defendant shall be provided a certified copy of the undertakings and a certified copy of the arrest warrant forthwith by the clerk of the court having jurisdiction and shall deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken or to the official into whose custody the defendant would have been given if committed, who shall detain the defendant in the official's custody thereon, as upon a commitment,

and shall acknowledge the surrender in a written certificate.

(b) The court having jurisdiction of the offense shall order that a surety be exonerated from liability for an undertaking and that any money or bonds deposited as bail be refunded when the person surrendering the defendant has:

- (1) presented to the court both of the documents described in subsection (a); and
- (2) given to the prosecuting attorney:
  - (A) three (3) days notice; and
  - (B) copies of both of the documents described in subsection (a).

*As added by P.L.261-1985, SEC.1. Amended by P.L.348-1995, SEC.2.*

### **IC 27-10-2-7**

#### **Apprehension of defendant; time; fees**

Sec. 7. For the purpose of surrendering the defendant, the surety may apprehend the defendant before or after the forfeiture of the undertaking or may empower any law enforcement officer to make apprehension by providing written authority endorsed on a certified copy of the undertaking and paying the lawful fees therefor.

*As added by P.L.261-1985, SEC.1.*

### **IC 27-10-2-8**

#### **Notice of trial or hearing; breach of undertaking; record**

Sec. 8. (a) The court shall give the bail agent or insurer legal written notice of the defendant's trial or hearing for purposes of entering a plea at least seventy-two (72) hours before the defendant's appearance is required unless the appearance is scheduled within seventy-two (72) hours from the execution of the bond.

(b) The defendant's failure to appear constitutes a breach of the undertaking. The court before which the cause is pending shall make a record of the breach at which time section 12 of this chapter then applies.

*As added by P.L.261-1985, SEC.1. Amended by P.L.224-1993, SEC.8; P.L.105-2010, SEC.7.*

### **IC 27-10-2-9**

#### **Property bonds; recordings; liens**

Sec. 9. (a) If the undertaking is a property bond, the clerk shall record the same in the proper records of the county. If the undertaking describes property in another county, the clerk of the trial court shall transmit the undertaking to the clerk of such other county, who shall likewise record it and return it to the first mentioned clerk.

(b) The undertaking shall be a lien on any real property described in it, until released in accordance with IC 35-33-8.5.

*As added by P.L.261-1985, SEC.1. Amended by P.L.5-1988, SEC.150.*

**IC 27-10-2-10**

**Recognizances; affidavits; forms**

Sec. 10. (a) Recognizances for the appearance of prisoners shall in all cases and in all courts be in writing, be taken with at least one (1) resident freehold surety or be secured by a surety company, and be substantially in the following form:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )  
State of Indiana.

vs.

John Doe

We, A B and C D, jointly and severally acknowledge ourselves bound to the state of Indiana in \_\_\_\_\_ dollars. If A B (the prisoner) shall appear on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the \_\_\_\_\_ court, to answer a charge of (here state the offense) and from day to day and from term to term thereof, and abide the order of the court until the cause is determined and not depart therefrom without leave, then this recognizance shall be void, else to remain in full force.

If the above named defendant does not appear at any time fixed in this bond, the court shall order CD (the surety) to produce the defendant. The court shall mail notice of this order to CD, the surety at \_\_\_\_\_ and \_\_\_\_\_ in \_\_\_\_\_ county and state of Indiana. If the surety does not produce the defendant, and does not pay all costs and late surrender fees in compliance with IC 27-10-2-12, the court shall, three hundred sixty-five (365) days after the mailing of the above notice to the surety, declare the bond forfeited, enter judgment forthwith against the surety, and certify the judgment to the clerk for record. Such forfeiture shall be without pleadings and without change of judge or change of venue. The obligors on such bond may appeal to the ruling of the court and appeal to the court of appeals as in other civil cases, and on appeal the evidence may be reviewed. Execution shall issue forthwith to the sheriff against the properties of each of us to be levied as other executions are levied.

Witness our hand and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
A B \_\_\_\_\_ (SEAL)  
C D \_\_\_\_\_ (SEAL)  
taken and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Officer taking surety)

Affidavits shall be taken from each personal surety substantially as follows:

State of Indiana )  
County of \_\_\_\_\_ )

I, C D, being duly sworn, on oath say, that I am worth in my personal rights and name, over and above all debts and liabilities of any and every kind, not less than \_\_\_\_\_ dollars, and that I possess real estate in my own name, located in the above-named county, which is

worth over and above all encumbrances and liens, more than \_\_\_\_\_ dollars; that I am surety on the following recognizance bonds and none other, aggregating the total amount of \_\_\_\_\_ to-wit: (Here name bonds and amounts, if any) \_\_\_\_\_, And that I am not surety on any recognizance bond of any kind in any court which bond has been forfeited which judgment remains unpaid.

C D \_\_\_\_\_ (SEAL)

Subscribed and sworn to before me, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Officer administering oath)

(b) Printed forms of the above bonds shall be kept by all clerks of court that are authorized by law to admit prisoners to bail and shall be supplied by the clerks to sheriffs.

(c) For the purposes of this article, a cause is determined when a:

- (1) judgment of conviction or acquittal is entered for a misdemeanor;
- (2) judgment is withheld in a misdemeanor case;
- (3) judgment of acquittal is entered in a felony case;
- (4) sentence is imposed in a felony case; or
- (5) defendant has been ordered or admitted to a diversion program.

*As added by P.L.261-1985, SEC.1. Amended by P.L.355-1989(ss), SEC.3; P.L.2-2005, SEC.73.*

#### **IC 27-10-2-11**

##### **Transcript of proceedings; docketing; liens**

Sec. 11. Such recognizance, together with a transcript of the proceedings and all papers in the case, shall be filed forthwith with the clerk of the proper court, who shall docket the cause and record such recognizance forthwith and enter it on the judgment docket, all as provided in IC 35-33-8.5. From the date of the entries in the records of the respective counties as provided in IC 35-33-8.5, it shall be a lien upon all lands in the counties where recorded owned by any of the obligors, and any judgment afterward had upon it shall relate back to the date of entry in such county, or counties, where any such lands are situated.

*As added by P.L.261-1985, SEC.1. Amended by P.L.5-1988, SEC.151.*

#### **IC 27-10-2-12**

##### **Failure of defendant to appear; notice; late surrender fees; forfeiture proceedings; satisfaction of judgment; revocation of license**

Sec. 12. (a) Only if a defendant does not appear as provided in the bond:

- (1) the court shall:
  - (A) issue a warrant for the defendant's arrest; and
  - (B) order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall, less than thirty (30) days after the defendant's failure to appear, mail notice of the order to both:

- (A) the bail agent; and
- (B) the surety;

at each of the addresses indicated in the bonds; and

(3) if the defendant later is arrested or otherwise appears:

- (A) the court shall order that the surety be released from the bond; and
- (B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

- (1) produce the defendant; or
- (2) prove within three hundred sixty-five (365) days:
  - (A) that the appearance of the defendant was prevented:
    - (i) by the defendant's illness or death;
    - (ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state;
    - (iii) because the required notice was not given; or
    - (iv) because authorities have refused to extradite the defendant, by a preponderance of the evidence; and
  - (B) the defendant's absence was not with the consent or connivance of the sureties.

(c) If the bail agent or surety does not comply with the terms of subsection (b) within one hundred twenty (120) days after the mailing of the notice required under subsection (a)(2), a late surrender fee shall be assessed against the bail agent or surety as follows:

- (1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.
- (2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.
- (3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice, the late surrender fee is fifty percent (50%) of the face value of the bond.
- (4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.
- (5) If the bail agent or surety does not comply with the terms of

subsection (b) within three hundred sixty-five (365) days of the mailing of notice required under subsection (a)(2), the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or three hundred sixty-five (365) days after the mailing of notice required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

(e) Proceedings relative to the bond, forfeiture of a bond, judgment on the forfeiture, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if the following conditions are met:

- (1) A written request is filed with the court and the prosecutor.
- (2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

- (1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;
- (2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;
- (3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and
- (4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has

been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

- (1) the date on which the defendant originally failed to appear as provided in the bond;
- (2) the date of compliance with subsection (b), if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice required by subsection (a)(2);
- (3) the amount of the bond;
- (4) the dollar amount of the late surrender fee due;
- (5) the amount of costs resulting from the defendant's failure to appear; and
- (6) if applicable, the dollar amount of the judgment of forfeiture entered by the court.

(h) Any surety on a bond may appeal to the court of appeals as in other civil cases without moving for a new trial, and on the appeal the evidence, if any, shall be reviewed.

(i) Fifty percent (50%) of the late surrender fees collected under this chapter shall be deposited in the police pension trust fund established under IC 36-8-10-12 and the remaining fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14.

*As added by P.L.261-1985, SEC.1. Amended by P.L.355-1989(ss), SEC.4; P.L.224-1993, SEC.9; P.L.348-1995, SEC.3; P.L.105-2010, SEC.8.*

### **IC 27-10-2-13**

#### **Liability of bail agent or surety**

Sec. 13. All liability of the bail agent or surety may be enforced on motion without necessity of an independent action if conformance with sections 1 through 12 of this chapter is shown.

*As added by P.L.261-1985, SEC.1. Amended by P.L.224-1993, SEC.10.*

### **IC 27-10-2-14**

#### **Collateral securities; receipts; records**

Sec. 14. (a) When a bail agent or insurer accepts collateral, the bail agent or insurer shall give a written receipt for the collateral. The receipt shall give in detail a full description of the collateral received and the terms of redemption. The collateral shall be considered to have been taken in a fiduciary capacity. The bail agent or insurer shall keep copies of all receipts at the bail agent's or insurer's place of business to be available to the commissioner for the commissioner's review.

(b) A bail agent or an insurer shall maintain in the bail agent's or insurer's office records of bail bonds executed or countersigned by the bail agent or insurer for at least one (1) year after the liability of the surety has been terminated. Salient details of the bonds shall be a part of the records required by this subsection.

(c) At the time a bail agent's license issued under IC 27-10-3 is

renewed, the bail agent or a firm or an agency that the bail agent is employed by, associated with, or a member of shall file with the commissioner a sworn statement on a form furnished by the commissioner. The statement must include:

- (1) a list of every outstanding or unpaid late surrender fee and judgment;
  - (2) the name of the court in which each outstanding or unpaid late surrender fee and judgment is recorded; and
  - (3) all other information determined by the commissioner to be pertinent.
- (d) The commissioner may:
- (1) deny;
  - (2) suspend;
  - (3) revoke; or
  - (4) refuse to renew;

a license issued under this article for failure of the licensee to comply with subsection (c).

(e) The commissioner may impose a civil penalty of not more than ten thousand dollars (\$10,000) against:

- (1) an insurer;
- (2) a bail agent; or
- (3) a firm or an agency;

for failure to comply with subsection (c).

(f) A civil penalty imposed under subsection (e) may be enforced in the same manner as a civil judgment.

*As added by P.L.261-1985, SEC.1. Amended by P.L.355-1989(ss), SEC.5; P.L.224-1993, SEC.11; P.L.86-2011, SEC.1.*

#### **IC 27-10-2-15**

##### **Bail instead of money or bonds; refund**

Sec. 15. If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly and the original undertakings shall be cancelled.

*As added by P.L.261-1985, SEC.1.*

#### **IC 27-10-2-16**

##### **Deposits instead of bond**

Sec. 16. (a) When the defendant has been admitted to bail, the defendant, or another in the defendant's behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, of the state, or of any county, city, or town within the state, equal in market value to the amount of such bail, together with the defendant's personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another. Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, the defendant shall be discharged from custody in the cause.

(b) When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being made, accompanied by a new undertaking, the original undertaking shall be cancelled.

*As added by P.L.261-1985, SEC.1.*