

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB334)

Received: 08/08/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing: Anne

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - procedure

Extra Copies: rlr

Submit via email: YES

Requester's email: Rep.Suder@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Commercial bail bonds

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 08/11/2003	kgilfoy 08/11/2003		_____			
/1			jfrantze 08/12/2003	_____	sbasford 08/12/2003	sbasford 08/12/2003	

FE Sent For:

<END>

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/?	mdsida	11-8/11 Kmg	6/8/12	Self 8/12			

FE Sent For:

<END>

Dsida, Michael

From: Emerson, Anne
Sent: Friday, August 08, 2003 8:57 AM
To: Dsida, Michael
Cc: Suder, Scott
Subject: Amendment language for AB 334

Mike,

Below is some language that was suggested to us for an amendment. We aren't sure if it would be best as a sub. amendment or just a regular amendment. So please let me know what you think would be best. If you have any questions please feel free to contact me.

Thanks!

Anne

969.12 (2) A surety under this chapter shall be either a natural person, an insurer authorized to do a surety business in this state, or except a surety under s. 345.61. ~~Ne~~Only an insurer authorized to do a surety business in this state ~~surety under this chapter~~ may be compensated for acting as such surety.

Dsida, Michael

From: Emerson, Anne
Sent: Monday, August 11, 2003 8:59 AM
To: Dsida, Michael
Subject: FW: Wisconsin A.B. 334



wi.bies.doc



wi.969.12.revised.d

oc

Mike, I found this in Scott's mailbox. I think the second attached document has some more recommended changes for the amendment. The other attached document is a letter that also explains the changes. I think this should answer your earlier questions. Let me know if these suggestions don't make any sense or if you have any questions.

Thanks!

Anne

-----Original Message-----

From: Gallagher, Edward [mailto:egallagher@surety.org]
Sent: Friday, August 08, 2003 1:48 PM
To: DNABIC@aol.com; Carmichael, William B.; Watson, Jerry; Moore, Kimberly R.
Cc: Shane, Patrick
Subject: Wisconsin A.B. 334

Attached are the text of a letter we are faxing to Representative Bies and current section 969.12 with our proposed changes redlined.

<<wi.bies.doc>>

<<wi.969.12.revised.doc>>

Plc from E. Gallagher

Told him that ~~current practice under~~

* current practice under s. 345.61 (assuming sureties are compensated) is inconsistent

w/ 969.12. ("under this ch." includes s. 345.61 sureties). ~~to~~

E.G. — ok to refer to 345.61

August 11, 2003

Via Telecopier and Mail
(608) 282-3601

Representative Garey Bies
Committee on Corrections and the Courts
Wisconsin State Assembly
P.O. Box 8952
Madison, WI 53708

Re: 2003 Assembly Bill 334

Dear Representative Bies:

The Surety Association of America ("SAA") is a national trade association of companies licensed to write fidelity and surety insurance in the United States. SAA's 538 members are sureties on the vast majority of bonds written in the United States and in Wisconsin.

SAA collects statistics on premiums and losses on surety bonds and files the statistics with the insurance departments of all fifty states. SAA is licensed by the Wisconsin Department of Insurance as a Rate Service Organization. SAA also represents the interests of its member companies before the United States Congress, the legislatures of the various states, and the executive branches of the federal and state governments.

In federal courts and the vast majority of states, criminal defendants can obtain pretrial release by posting a bond with a regulated insurance company as the surety. Such commercial bail bonds, for which the insurer receives a fee, serve several public purposes. A possibly innocent defendant can remain free pending trial, but the bail bond surety has a financial stake in assuring that the defendant appears for trial. The taxpayers do not bear the cost of incarcerating the defendant, and law enforcement authorities receive assistance in locating the defendant if he does not appear.

We do not suggest that commercial bail should be the exclusive means of pretrial release, but it should be one alternative available to the courts to use in appropriate cases. Under current Wisconsin law, however, insurance companies are barred from writing bail bonds. Wis. Stat. §969.12(2) forbids anyone but a natural person from acting as surety on a bail bond, and forbids compensation of the surety. The only exception is one for automobile club bonds for minor traffic offenses pursuant to Wis. Stat. §345.61.

Representative Garey Bies
August 11, 2003
Page 2

SAA supports the concept behind Assembly Bill 334 to permit compensated sureties as an alternative to the present system. That is, everything permitted today would still be permitted, but in addition the court could choose to require a commercial bail bond if it thought that was the most appropriate means of releasing the defendant while assuring his or her appearance for trial.

We believe that A.B. 334 would accomplish its purpose more effectively if it were amended to change §969.12(2) to read as follows:

A surety under this chapter shall be either a natural person, an insurer licensed to do business in this state, or a surety under s. 345.61. Only an insurer licensed to do business in this state may be compensated for acting as such surety.

A companion change in paragraph (1) of §969.12 would limit the requirement that the surety be a resident of Wisconsin to natural persons. The current text of Wis. Stat. §969.12 with our proposed changes redlined is enclosed.

The reason for our suggested changes from the current text of A.B. 334 is to assure that natural persons writing commercial bail for a fee would have to meet the same capital and reserve requirements as a corporate surety. If a friend or relative gratuitously guarantees the defendant's appearance, he or she would not be expected to become licensed or meet the same financial standards as a commercial surety. Under current law, no one can charge a fee, so our proposal does not change anything for natural persons, but it would allow properly licensed entities to offer commercial bail bonds for a fee.

It is important that there be oversight and regulation of commercial bail sureties, and the Department of Insurance can provide it just as it regulates other lines of insurance. Only entities meeting the Department's requirements would be licensed. No court would be required to utilize commercial bail bonds, but they would be an alternative available to Wisconsin judges just as they are available in almost all other states.

We appreciate your consideration of this matter and would be glad to provide any information we have.

Sincerely yours,

Edward G. Gallagher
General Counsel

969.12. Sureties

(1) Every natural person acting as a surety under this chapter, except a surety under s. 345.61, shall be a resident of the state.

(2) A surety under this chapter shall be either a natural person, an insurer licensed to do business in this state, or except a surety under s. 345.61. No Only an insurer licensed to do business in this state ~~surety under this chapter~~ may be compensated for acting as such surety.

(3) A court may require a surety to justify by sworn affidavit that the surety is worth the amount specified in the bond exclusive of property exempt from execution. The surety shall provide such evidence of financial responsibility as the judge requires. The court may at any time examine the sufficiency of the bail in such manner as it deems proper, and in all cases the state may challenge the sufficiency of the surety.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0144/2

MGD: King

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2003 ASSEMBLY BILL 334**

Tues 8/12 PM.

Sen. Cat.

1 AN ACT ...; relating to: sureties in criminal cases.

Analysis by the Legislative Reference Bureau

Under current law, a surety — a person who guarantees the appearance at trial of a criminal defendant and who must pay any fine imposed if the defendant does not appear — must either be a natural person who is a resident of the state or act as a surety through an automobile club, association, or insurance company. Current law also prohibits a surety from being compensated for acting as a surety.

This bill authorizes an insurer that is licensed to do business in this state to act as a surety. The bill also specifies that the prohibition on compensation for a surety does not apply to an insurer that is licensed to do business in this state or to a person acting as a surety through an automobile club, association, or insurance company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 969.12 (1) of the statutes is repealed.

3 SECTION 2. 969.12 (2) of the statutes is amended to read:

1 969.12 (2) A surety under this chapter shall be a natural person who is a
2 resident of the state, ~~except~~ ²an insurer licensed to do business in this state, or a
3 surety under s. 345.61. No ~~surety under this chapter~~ person or entity, other than an
4 insurer licensed to do business in this state or a surety under s. 345.61, may be
5 compensated for acting as such a surety under this chapter.

History: 1979 c. 34; 1993 a. 486.

(END)