



# Smith County Bail Bond Board

# Rules & Regulations

Adopted and Approved by the Smith County Bail Bond Board at a  
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## Smith County Bail Bond Board Rules and Regulations

Tyler, Texas

**(06-28-2010 )**

Pursuant to the provision of Texas Occupations Code Chapter 1704, as amended, the Smith County Bail Bond Board Rules and Regulations, herein “Rules,” are promulgated to govern the giving and making of bail bonds in Smith County, Texas. Unless otherwise noted, all references to sections or the “Act” are references to Texas Occupations Code Chapter 1704, as amended.

### Definitions

- (1) “Person” means an individual or corporation;
- (2) “Bondsman” means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety or co-surety any bond for other persons;
- (3) “Bonding Business” means the solicitation, negotiation, or execution of a bail bond by a bail bond surety;
- (4) “Company” includes corporations and other business entities;
- (5) “Bond” includes cash deposit and any other similar deposit or written undertaking to assure appearance;
- (6) “Board” means the Smith County Bail Bond Board;
- (7) “Licensee” means a person licensed hereunder;
- (8) “Employee” means any person hired by the licensee to perform any lawful acts necessary to secure or perfect a bail bond;
- (9) “Final Judgment” means a judgment that disposes of all issues and parties in a case.
- (10) “Chapter” means 1704 of Texas Occupations Code

## Article I – Bail Bond Board Membership, Meetings & Duties

### Rule 101 – Name

Smith County shall establish a bail bond board known as the “Smith County Bail Bond Board”, hereinafter “Board”

### Rule 102 – Members of the Board

The Board shall be composed of the following persons:

- (1) The Smith County Sheriff or a designee from his/her office who must be his/her administrator or a deputy sheriff of the rank of sergeant or greater;
- (2) A District Judge or designee of Smith County having jurisdiction over criminal matters and designated by the Presiding Judge of the administrative judicial district;
- (3) The County Judge of Smith County or a member of the Smith County Commissioner’s Court designated by the County Judge, or a designee approved by the Commissioner’s Court;
- (4) A Judge or designee of a Smith County Court or a Smith County Court at Law having jurisdiction over criminal matters designated by the Commissioner’s Court;
- (5) The District Attorney of Smith County or his/her designee if that person is an assistant district attorney;
- (6) A licensed bail bond surety agent for a corporate surety in Smith County elected under Rule 108, or a bail bond surety or agent for a corporate surety licensed in Smith County, who is designated by the elected surety or agent;
- (7) A Smith County Justice of the Peace;
- (8) The Smith County District Clerk or the Clerk’s designee;
- (9) The Smith County Clerk or the Clerk’s designee;
- (10) The board may appoint a presiding judge or a municipal court located within the county;
- (11) The presiding municipal judge of the principal city (Tyler) in a county in which the principal city (Tyler) designates a presiding judge in its municipal court system or his/her designee if that person is another municipal judge.
- (12) The Smith County Treasurer of the Treasurer’s designee; and
- (13) A criminal defense attorney practicing in the county and elected by other attorneys whose principal places of business are located in Smith County and who are not legally prohibited from representing criminal defendants or the designee of the criminal defense attorney.

An official list of the name and position of each member of the board shall be provided by the Coordinator of the Bail Bond Board to all members of the board and all licensed bail bondsmen in Smith County. The list shall also include the name and position of any designee or alternate representative. When a change is made of the representation by any board member, notice shall be given to the Coordinator of the Bail Bond Board and a new updated list shall be distributed to all board members and bail bondsmen of Smith County.

### Rule 103 – Meeting Times

The Smith County Bail Bond Board shall meet at least once a month. The Smith County Bail Bond Board shall meet:

- (a) Regularly at **11:30** am on the third Wednesday of each month, or the first business day thereafter if such date be an official holiday;
- (b) On call of the chairman; or
- (c) By request of three (3) or more members of the Board, the presiding officer shall call a special meeting at any time in accordance with the posting requirements of the Texas Open Meetings Act.

### Rule 104 – Meeting Location

The Board shall meet at the Smith County Annex Building, Commissioners Court Conference Room, located at 200 East Ferguson Street, Suite 100 (Or Other Designated Room), Tyler, Texas, unless notice is posted otherwise.

### Rule 105 – Notice of Meetings

All notices of meetings shall be posted near the main entrance of the Smith County Courthouse, meeting the requirements of the Open Meetings Act or as otherwise provided by law.

The office of the Board shall be the regular office of the member or designee serving as Coordinator of the Board, unless notice is posted to the contrary.

### Rule 106 – Quorum

Four (4) members of the Board shall constitute a quorum for the conduct of business. The Board may take action only on a majority vote of the members present.

### Rule 107 – Election and Duties of Officers/Appointment of Parliamentarian

The Smith County Bail Bond Board shall elect its officers at the regular January meeting of each year. Officers include the Chairperson, hereinafter referred to as “Chair” and Vice Chairperson, hereinafter referred to as “Vice Chair”.

1. The Chair shall preside over all meetings and shall serve until the next annual election, unless he/she be sooner disqualified.
2. The Vice Chair shall act in the temporary absence of the Chair. In the event the Chair should be disqualified or resigns for any reason before the end of his/her term, the Vice Chair shall automatically become the Chair. In such event, or if the Vice Chair becomes disqualified, at the next regular meeting a (new) Vice Chair shall be chosen.
3. In the absence of the Chair and the Vice Chair, the members of the Board present may designate a Temporary Chair for that specific meeting only. A quorum must be present.
4. The Board shall choose/employ a Coordinator, who need not be a member of the Board, who shall be responsible for:
  - (a) Supervising the receipt of applications;
  - (b) The preparation of agendas;
  - (c) The preparation of records and transcripts of proceedings;

- (d) The maintenance of records and minutes of meetings;
- (e) The publication and/or posting of notices; and
- (f) The general office affairs not otherwise specifically assigned by these rules and regulations, but shall not have authority to bind the Board.

The Director of the Pre-Trial Release Office shall supervise the Coordinator of the Board during the regular work hours set by the policy.

5. The Sheriff or his designee shall be the Bailiff of the Board.
6. The Chairman/Chairperson shall appoint a Parliamentarian, who may be anyone who shall follow and enforce the Robert's Rules of Order
7. The Presiding Officer may vote on any board matter.

Rule 108 - Election of Bail Bond Surety Board Member

The Board shall annually conduct a secret ballot election to elect the member of the Board who serves as the representative of the licensed bail bond sureties as follows:

1. Election day is the third Thursday in November each year.
2. A list of licensed bail bond sureties or agents for a corporate surety shall comprise the ballot.
3. The Smith County Bail Bond Board shall maintain a ballot box between 9:00 am and 4:00 pm in the Elections Administrator's Office on election day. The voting will be by secret ballot with ballots provided by the Elections Administrator's Office. The votes will be canvassed and the results posted by the Election's Administrator near the main entrance of the Smith County Courthouse.
4. Each individual licensed in Smith County is entitled to cast one vote for each license held. Each vote may be cast only during the above named hours, either in person or by delivering to the Elections Administrator's Office, a ballot, accompanied by a sworn, notarized or witnessed statement by the license that such ballot represents his/her vote.
5. The licensee receiving a majority of the votes cast will be certified as the winner of the election. If no licensee receives a majority of the votes, a run-off election will be conducted within one (1) week, on a date determined by the Board, under the same format and procedures. The two (2) licensees that receive the most votes cast in the first election will be the only two (2) candidates on the ballot in the runoff election. The licensee receiving the most number of votes in the runoff election. The licensee receiving the most number of votes in the run-off election will be certified as the winner.
6. If three (3) or more licensees receive the same number of votes in the first election, and more than any other licensee, then all such licensees will be included on the run-off election ballot.
7. If the run-off election also results in a tie, the Chair of the Smith County Bail Bond Board will flip a coin in open meeting. The licensee winning the coin toss will be certified as the winner.
8. The term of office is one (1) year, starting on January 1 and ending December 31 of each year.

9. Should the occasion arise that the bail bondman representative not be able to serve out his/her term, a replacement shall be elected pursuant to the above process through a called special election within one (1) week after notification of his/her inability to serve.
10. Impeachment of a representative may occur ONLY if 2/3 of the licensed bail bondsmen petition the Board calling for a "called special election" based upon lack of performance and/or conduct not conducive to good bail bond business.

#### Rule 109 - Powers and Duties of Board

##### 1. Administrative Authority

The Board's administrative authority shall include the following:

- (a) Exercise any powers incidental or necessary to the administration of the Act;
- (b) To conduct hearings and investigations and make determinations relating to issuance, denial, or renewal of licenses;
- (c) Deposit fees collected under this chapter in the General Fund of the county;
- (d) Adopt any rule necessary to implement this chapter;
- (e) Supervise and regulate each phase of the bonding business in the county;
- (f) Issue licenses to qualified applicants;
- (g) Deny licenses to unqualified applicants;
- (h) Employ persons necessary to assist in board functions; and
- (i) Conduct board business, including maintaining records and minutes.

##### 2. Enforcing Authority

The Board's enforcement authority shall include the following:

- (a) Enforce the Chapter in the county; Chapter 1704- Occupations Code
- (b) Conduct hearings and investigations and make determinations relating to license suspension and revocation;
- (c) Suspend or revoke a license for violation of the Chapter or rule adopted by the Board under this Chapter; and
- (d) To require a record and transcription of each Board proceeding.

The Board's enforcement authority may include the following:

- (a) Compel the appearance before the Board of an applicant of license holder;
- (b) During a hearing conducted by the Board, administer oaths, examine witnesses, and compel production of pertinent records and testimony by a license holder or applicant.

##### 3. Posting Board Action or Rule

The Board shall post a rule adopted or an action taken by the Board near the main entrance of the county courthouse for the ten (10) days preceding the date the rule or action takes effect. Be sure the effective date is posted.

##### 4. Licensed Bondsman Surety List      The Board:

- (a) Shall post in each Court in the County having jurisdiction of criminal cases and shall provide each local official responsible for the detention of prisoners in the County a current list of each licensed bail bond surety and each licensed agent of a corporate surety in the county.
- (b) Shall display a list of each licensed bail bond surety and each licensed agent of a corporate surety in the county at each location where prisoners are examined, processed or confined.
- (c) No non-licensed person (even those exempt from licensing) may be placed on the list.
- (d) The posting shall have an effective date.

#### 5. Bonding Business Reports

On the request of the Texas Judicial Council, the Board shall file a report with furnish information to the Council relating to the operation of the bonding business in the county.

#### 6. Notification of License Suspension or Revocation

The Board shall immediately notify each court and each local official responsible for the detention of prisoners in the county of:

- (1) The suspension or revocation of a license issued under this chapter; and
- (2) The revocation of the authority of a license holder's agent

#### 7. Notification of Default by Corporation

The Board shall promptly notify the Texas Department of Insurance of a default by a corporation on a financial obligation undertaken by the corporation in the county.

#### 8. Solicitation and Advertisement

The Board by rule may regulate solicitations or advertisements by or on behalf of license holders to protect the public from harassment, fraud or misrepresentation.

#### 9. Advertising Location

No bondsman (licensed or exempt), or employee of a bondsman or any person shall advertise in any manner or through any instrument or device, on the property of or in any building where prisoners are processed or confined, including but not limited to the posting or distribution of personal or professional business cards or matches, the carrying of a clipboard or brief case with advertising attached or the wearing of any distinctive clothes or hats. The Sheriff of Smith County shall set guidelines, control and regulate all matters pertaining to advertising in and around the Jail Facility and other locations under his/her control at his/her discretion.

Complaints or violations shall be reported to the Sheriff. The Board will not have any authority to receive or consider any complaint or violation regarding this particular matter.

#### **10. Telephone Directory Advertising**

Telephone directory advertising for licensee shall be listed in the proper name of the licensee and may contain assumed or corporate names. The license number issued to the licensee shall be contained in the advertisement. No person or persons may advertise as a bonding company if they are not licensed by the Board.

#### **Rule 110 - Regulation of Proceedings**

All proceedings not governed by specific statutory provision or rule of this Board shall be conducted in accordance with ROBERTS RULES OF ORDER and the presiding officer shall be EX-OFFICIO PARLIAMENTARIAN, Referring to Rule 107(6), the CHAIR shall utilize the services of the appointed PARLIAMENTARIAN when in attendance of the scheduled meetings.

### **Article II - Bondsman Licensing**

#### **Rule 201 - Bondsman Application**

Except as provided by Section 1704.163, a person may not act as a bail bond surety in Smith County unless the person holds a license issued by the Board. Any person desiring to act as a bondsman in any court of Smith County shall first file with the Board a sworn, completed application of a form approved by the Board and provided by the Coordinator. Any person desiring to act as a corporate agent must file a separate application for each agent operating under a corporate power of attorney.

The application shall be in such form and shall contain such information as the Board may prescribe. The information required by the Board is contained in such application, is fully incorporated herein and attached as Addendum A and Addendum B to these rules. The Board also incorporates all licensing requirements set forth in Chapter 1704, Subchapter D of the Texas Occupations Code.

#### **Rule 202 - Preliminary Determinations - 1704.157**

1. Upon receiving an application, the Board shall determine whether the applicant meets the requirements of the chapter and rules, including but not limited to, the security requirements necessary to comply with Section 1704.160.
2. Applications shall be considered at each meeting of the Board, and hearings shall be held on applications at times set by the Board, after the preliminary determinations have been made.

#### **Rule 203 - Bondsman Appearance**

Each applicant shall be notified by the COORDINATOR to appear in person before the Board on the date his/her application is to be considered to respond to such questions as may be necessary for the Board to make its decision on the application.

#### Rule 204 - New and Renewal Application Consideration

Applications shall be received and considered at the next meeting after the expiration of thirty days of receipt, to allow sufficient time for a preliminary determination of the application. The thirty day requirement may be extended by the Board, if necessary.

#### Rule 205 - Decision on Application

After consideration under RULE 204, the Board shall enter an order conditionally approving the application if the Board determines that a ground does not exist to deny the application. If the Board determines that a ground exists to deny the application, the Board shall enter an order denying the application. The Board shall give written notice to an applicant of the Board's decision on the application.

#### Rule 206 - Tentative Approval & Security Requirements

1. Upon notice from the Board that the application has been tentatively approved, the application shall not later than the 90<sup>th</sup> day after the date of receipt of the notice:
  - a. If the applicant is an individual:
    - i. Subject to Chapter 1704.160, deposit with the Smith County Treasurer a cashier's check, certificate of deposit (which shall include an assignment, on a form approved by the Board, of the principal to the (SMITH COUNTY BAIL BOND BOARD), or cash in the amount of at least \$50,000. Certificate of Deposit must be from a banking institution with a local branch in Smith County.
    - ii. Subject to Chapter 1704.160, execute in trust each deed to the property listed in the application; or
  - b. If the applicant is a corporation, subject to Chapter 1704.160, deposit with the County Treasurer a cashier's check, certificate of deposit or cash in the amount of at least \$50,000. Certificate of Deposit must be from a banking institution with a local branch in Smith County.
2. A deposit made under Subsection (1)(a) or (b) may not be less than \$50,000. A deposit shall be placed in a fund known as a bail security fund.
3. The property executed in trust under Subsection (1)(a)(ii) must be valued in the amount indicated on an appraisal by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program. The total value of the property executed in trust under Subsection (1)(a)(ii) may not be less than \$50,000. A trust created under Subsection (1)(a)(ii) is subject to the condition that the property executed in trust may, after notice is provided and under the conditions required by the Code of Criminal Procedure, be sold to satisfy a final judgment on a forfeiture on a bail bond executed by the applicant.
4. If an applicant is married, the applicant's spouse must execute each deed of trust under Subsection (1)(a)(ii) that involves community property.
5. A board shall file each deed of trust in the records of each country in which the property is located. The applicant shall pay the filing fee.

6. The certificate of authority to do business in this state issued under Article 8.20, Insurance Code, to an applicant that is a corporation is conclusive evidence of:
  - a. The sufficiency of the applicant's security; and
  - b. The applicant's solvency and credits. A license holder must maintain the amount of security required by this section during the time the person holds this license.

#### Rule 207 - Issuance of License and ID Card

After an approved applicant has presented proof that he/she has satisfied Rule 208, the Coordinator shall issue a license on a form approved by the Board. Each license shall indicate the bondsman's name, the corporate agent's name, if any, any assumed name, the date of expiration and a license number. A temporary permit shall be issued to cover operations from time of approval until such time an official license and identification card can be provided. A license card may be called for and presented upon request, to the Sheriff, deputy sheriff or designee at the time any bail bond is presented.

#### Rule 208 - License Expiration & Renewal

1. A license issued or renewed under the Chapter expires on the second anniversary date the license or is to expire, as appropriate, if the license:
  - a. Has been issued for less than eight (8) consecutive years; or
  - b. Has been suspended.
2. To renew a license, a license holder must file with the board an application for renewal not later than the 31<sup>st</sup> day before the license expiration date.
3. An application for renewal must comply with the requirements for an original license application under Chapter 1704.154, including the \$500 filing fee requirement.
4. A board shall approve an application for renewal if:
  - a. The applicant's current license is not suspended or revoked;
  - b. The application complies with the requirements of this chapter; and
  - c. The board does not determine that a ground exists to deny the application.
5. A person who applies to renew a license that has been held by the person for at least eight consecutive years without having been suspended or revoked under this chapter and who complies with the requirements of this chapter may renew the license for a period of 36 months from the date of expiration if the board:
  - a. Knows of no legal reason why the license should not be renewed; and
  - b. Determines that the applicant has submitted an annual financial report to each county bail bond board before the anniversary date of the issuance of the applicant's license.
6. A license renewed under Rule 211.5 may be renewed subsequently each 36 months in a similar manner.

#### Article III - Attorney Exemption

1. Except as provided by this section, a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:
  - a. Is licensed to practice law in this state; and

- b. Represents the other person in the criminal case for which the bond was given.
2. A person executing a bail bond or acting as a surety under this section may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation. If the board determines that a person has violated this subsection, the person has violated this subsection, the person may not execute a bail bond or act as a surety under this section until the person has remedied the violation.
3. A person executing a bail bond or acting as a surety under this section who has been paid a fee for executing the bond or acting as a surety is not relieved of liability on the bond solely because the person has not been employed to represent the principal on the merits of the criminal case.

## Article IV - Bonding Business

### Rule 401 - Acceptance of License Holder Bail Bonds

A sheriff shall accept or approve a bail bond executed by a license holder in the county in which the license holder is licensed if:

1. The bond is for a county or district case;
2. The bond is executed in accordance with this chapter and the rules adopted by the board; and
3. A bail bond is required as a condition of release of the defendant for whom the board is licensed.

### Rule 402 - Record Requirements

1. A license holder shall maintain:
  - a. A record of each bail bond executed by the license holder; and
  - b. A separate set of records for each county in which the license holder is licensed.
2. The records required to be maintained under this section must include for each bail bond executed and enforced:
  - a. The style and number of the case and the court in which the bond is executed;
  - b. The name of the defendant released on bond;
  - c. The amount of bail set in the case;
  - d. The amount and type of security held by the license holder; and
  - e. A statement of:
    - i. Whether the security held by the license holder is
      1. For the payment of a bail bond fee; or
      2. To assure the principal's appearance in court; and
    - ii. The conditions under which the security will be returned.
3. The records required under this section shall be:
  - a. Made available for inspection and copying at the board's expense on demand by the board or an authorized representative of the board;
  - b. Maintained at the license holder's office location in the county; and

- c. Maintained for not less than four years after the conclusion of the case for which the bond was given.

Rule 403 - Bail Bond Limit: Additional Security

1. Except as provided by Subsection (4), a license holder who holds a license originally issued before September 1, 1999, may not execute, and a person may not accept from the license holder, a bail bond that, in the aggregate with other bail bonds executed by the license holder in that county, results in a total amount that exceeds 10 times the value of the security deposited or executed by the license holder under Section 1704.160.
2. A county officer or an employee designated by the board shall maintain for each license holder the total amount of the license holder's current liability on bail bonds.
3. A license holder may not execute a bail bond if the amount of the license holder's current total liability on judgments nisi in that county equals or exceeds twice the amount of security deposited or executed by the license holder under Section 1704.160.
4. A license holder, at any time, may increase the limits prescribed by this section by depositing or executing additional security.
5. This section does not apply to a license holder that is a corporation.
6. A bail bond surety who holds a license originally issued on or after September 1, 1999, and who:
  - a. Has been licensed for fewer than two years or has had a license under this chapter suspended or revoked may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Chapter 1704.160 (a) (1) (A) plus five times the value of the property held in trust under Chapter 1704.160 (a) (1) (B);
  - b. Has been licensed for at least two years and fewer than four years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Chapter 1704.160 (a) (1) (A) plus six times the value of property held in trust under Chapter 1704.160 (a) (1) (B);
  - c. Has been licensed for at least four years and fewer than six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Chapter 1704.160 (a) (1) (A) plus eight times the value of property held in trust under Chapter 1704.160 (a) (1) (B);
  - d. Has been licensed for at least six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Chapter 1704.160 (a) (1) (A) plus 10 times the value of property held in trust under Chapter 1704.160 (a) (1) (B).

If a bail bond surety is subject to Subsection (6)(a) because the person has had a license under this chapter suspended or revoked and is also subject to Subsection (6)(b), (c) or (d), the prohibition imposed by Subsection (6)(a) controls.

#### Rule 404 - Payment of Final Judgment

1. A person shall pay a final judgment on a forfeiture of a bail bond executed by the person not later than the 31<sup>st</sup> day after the date of the final judgment unless a timely motion for a new trial has been filed. If a timely motion for a new trial or a notice of appeal has been filed, the person shall:
  - a. Pay the judgment not later than the 31<sup>st</sup> day after the date the motion is overruled, if the motion is overruled; or
  - b. Deposit with the court cash or a supersedeas bond in the amount of the final judgment, if an appeal is filed.
2. If a license holder fails to pay a final judgment as required by Subsection (1), the judgment shall be paid from the security deposited or executed by the license holder under Chapter 1704.160.

#### Rule 405 - Bail Bond Settlement

Before a final judgment on a forfeiture of a bail bond:

1. The prosecuting attorney may recommend to the court a settlement in an amount less than the amount stated in the bond; or
2. The court may, on its own motion, approve a settlement.

#### Rule 406 - Replacement of Security

If a final judgment on a forfeiture of a bail bond is paid from the security deposited or executed by a license holder under Section 1704.160, the license holder shall deposit or execute additional security in an amount sufficient to comply with that section.

#### Rule 407 - Surrender of Principal; Contest

1. A person executing a bail bond may surrender the principal for whom the bond is executed by:
  - a. If the principal is represented by an attorney, notifying the principal's attorney of the person's intention to surrender the principal in a manner provided by Rule 21a, Texas Rules of Civil Procedure; and
  - b. Filing an affidavit with the court or magistrate before which the prosecution is pending that states:
    - i. The person's intention to surrender the principal;
    - ii. The court and cause number of the case;
    - iii. The name of the defendant; iv. The offense with which the defendant is charged;
    - v. The date of the bond;
    - vi. The reason for the intended surrender; and
    - vii. That notice of the person's intention to surrender the principal has been provided as required by this subsection.
2. If a principal is surrendered under Subsection (1) and the principal or an attorney representing the state or an accused in the case determines that a reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender.

3. If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for execution of the bond.

Rule 408 - Bond Liability

1. A person executing a bail bond is relieved of liability on the bond on the date of disposition of the case for which the bond is executed.
2. For purposes of this section, disposition of a case occurs on the date the case is dismissed or the principal is acquitted or convicted.

Rule 409 - Bond Discharged on Appeal

1. A bail bond shall be discharged if:
  - a. The principal appeals the case for which the bond is executed; and
  - b. The person who executed the bond does not agree to continue during the appeal as surety
2. A court may not require a person who executes a bail bond to continue to surety while the principal appeals the case for which the bond is executed unless the person agrees to continue during the appeal as surety.
3. This section does not prohibit a principal from obtaining an appeal bond under the Code of Criminal Procedure.
4. This section prevails over any provision contained in the bail bond.

Rule 410 - Withdrawal of Security

1. A license holder may withdraw the security deposited or executed under Section 1704.160, and the security shall be returned to the license holder or the license holder's heirs or assigns, if:
  - a. The license holder:
    - i. Ceases to engage in the bonding business;
    - ii. Ceases to maintain the license; and
    - iii. Presents a release by the board; and
  - b. No judgment or bond liability, actual or potential, is outstanding against the license holder.
2. The security returned to a license holder under Subsection (1) is equal to the amount of security deposited or executed under Chapter 1704.160 minus the amount of security:
  - a. Depleted under Chapter 1704.204(b) to pay a judgment; and
  - b. Necessary to secure any unexpired obligation on a bail bond executed by the license holder

Rule 411 – Corporate Power of Attorney

1. A corporate shall, before executing any bail bond, file with the county clerk of the county in which the corporation intends to execute the bond a power of attorney

designing an agent of the corporation authorized to execute bail bonds on behalf of the corporation.

2. An agent designated by a power of attorney under Subsection (1) for a corporation holding a license under this chapter must be designated by the corporation in the corporation's application for a license.
3. An agent designated by a power of attorney under Subsection (1) is not required under this chapter to obtain a local recording agent license under Texas Insurance Code Chapter 4051.
4. A corporation may limit the authority of an agent designated under Subsection (1) by specifying the limitation in the power of attorney that is filed with the county clerk and the board.

#### Rule 412 – Effect of Default by Corporation: Notice Required

1. A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds.
2. If a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to: a. The sheriff; b. The chief of police; or c. Another appropriate peace officer.
3. For purposes of this section:
  - a. A corporation is considered in default on a bail bond beginning on the 11<sup>th</sup> day after the date the trial enters a final judgment on the scire facias and ending on the date the judgment is satisfied, set aside, or superseded; and
  - b. A corporation is not considered in default on a bail bond if, pending appeal, the corporation deposits cash or a bond in the amount of the final judgment with the court in which the bond is executed.
4. A deposit made under Subsection (3)(b) shall be applied to the payment of a final judgment in the case.
5. The board shall promptly notify the Texas Department of Insurance if a corporation fails to pay a judgment of forfeiture as provided by Rule 404(1).

#### Rule 413 – Office Location

1. A license holder shall maintain an office in the county in which the license holder holds a license.
2. Not later than the seventh day after the date a license holder opens a new office or moves an office to a new location, the license holder shall notify the board of the location of the office.

### Article V – Complaints

#### Rule 501 – Filing a Complaint

The Coordinator of the Board is designated as the agent of the Board for the receipt of complaints.

#### Rule 502 – Processing a Complaint

Upon receipt of a complaint, the Coordinator shall send a copy to each member of the Board. The Board shall consider said complaint at the next regularly scheduled meeting of the Board, unless considered earlier at a special or emergency session called by the Chairman of the Board, and shall make such orders as it deems appropriate respecting the investigation and prosecution of said complaint.

#### Rule 503 – Notice of Complaint

The Coordinator shall give notice to the accused licensee by certified mail at least ten (10) days prior to the date of a hearing on the complaint. The notice shall specify the charges of the violation made against the licensee, and the hearing shall be limited to those charges.

#### Rule 504 – Disqualification

If the complaint relates to a licensee who is a member of the Board, said licensee shall be disqualified as a member of the Board to consider said complaint. The Chairman shall call a special session of the Board as soon as practicable for the purpose of election, by a majority of the licensees present at said meeting, of a licensee to serve as a member of the Board in place and stead of the licensee Board member complained against.

#### Rule 505 – Subpoenas

The Board vests authority to issue subpoenas upon the request of any interested person including the Chairman, Vice-Chairman or Coordinator of the Board.

### Article VI – Enforcement Provisions

#### Rule 601 – Investigation

1. The Board, on its own motion, may investigate an action of or a record maintained by a license holder that relates to a complaint that the license holder has violated this chapter.
2. The Board shall investigate an action of or a record maintained by a license holder if:
  - a. the Board receives a sworn complaint providing reasonable cause to believe that a violation of this chapter has occurred; or
  - b. a court requests an investigation.

#### Rule 602 – Discretionary License Suspension or Revocation: Grounds

After notice and hearing, a board may revoke or suspend a license if the license holder:

1. violates this chapter or a rule adopted by the board under this chapter;
2. fraudulently obtains a license under this chapter
3. makes a false statement or misrepresentation
  - a. in an application for an original or renewal license; or
  - b. during a hearing conducted by the board
4. refuses to answer a question submitted by the board during a hearing relating to the license holder's license, conduct, or qualifications;
5. is finally convicted under the laws of this state, another state, or the United States of an offense that:

- a. is a misdemeanor involving moral turpitude or a felony; and
- b. is committed after August 27, 1973
- 6. is found by a court to be bankrupt or is insolvent;
- 7. is found by a court to be mentally incompetent;
- 8. fails to pay a judgment in accordance with Chapter 1704.204;
- 9. pays commissions or fees to or divides commissions or fees with, or offers to pay commissions or fees to or divide commissions or fees with a person or business entity not licensed under this chapter;
- 10. solicits bonding business in a building in which prisoners are processed or confined;
- 11. recommends to a client the employment of a particular attorney or law firm in a criminal case;
- 12. falsifies or fails to maintain a record required under this chapter;
- 13. fails to promptly permit the board, or a representative or an agent of the board, or the county in which the license holder is licensed to inspect a record required under this chapter;
- 14. acts as a bail bond surety under a suspended or expired license;
- 15. fails two or more times to maintain the amount of security required by Chapter 1704.160; or
- 16. misrepresents to an official or an employee of the official the amount for which the license holder may execute a bail bond for purposes of obtaining the release of a person on bond.

Rule 603 – Mandatory License Suspension or Revocation: Grounds

- 1. A board shall immediately suspend a license if the license holder fails to maintain the amount of security required by Chapter 1704.160. A board is not required to provide notice of a hearing before suspending a license under this subsection. A license suspended under this subsection shall be immediately reinstated if the license holder deposits or executes the amount of security required by Chapter 1704.160.
- 2. After notice and hearing as provided by Chapter 1704.254, a board shall revoke a
  - a. License if the license holder fails to pay a judgment in accordance with Chapter 1704.204;
  - b. And the amount of security maintained by the license holder under Chapter 1704.160 is insufficient to pay the judgment.

Rule 604 – Failure to Pay Final Judgment by Bail Bond Surety

- 1. The board or its authorized representative shall immediately notify the sheriff if a bail bond surety fails to pay a final judgment of forfeiture as provided by Rule 404(1).
- 2. After receiving notification, the sheriff may not accept any bonds from the bail bond surety until the surety pays the judgment.
- 3. The bail bond surety's privilege to post bonds is reinstated when the bail bond surety pays the judgment.
- 4. A board is not required to provide notice or a hearing before making the notification required by this section.

#### Rule 605 - Notice and Hearing

1. Notice of a hearing to suspend or revoke a license under this chapter must:
  - a. Be sent by certified mail to the last known address of the license holder not later than the 11<sup>th</sup> day before the date of the hearing;
  - b. State each alleged violation of this chapter; and
  - c. Include a copy of any written complaint on which the hearing will be based.
2. The hearing is limited to each alleged violation stated in the notice.
3. During the hearing, the license holder:
  - a. Is entitled to an opportunity to be heard; and
  - b. May present and cross-examine witnesses.
4. The hearing must be recorded. A license holder may obtain a copy of the record on request and payment of the reasonable costs of transcription.

#### Rule 606 - Appeal; Venue

1. An applicant or a license holder may appeal an order or a board denying a application for a license or renewal of a license, or suspending or revoking a license, by filing a petition in a district court in the county not later than the 30<sup>th</sup> day after the date the person receives notice of the denial, suspension or revocation.
2. An appeal filed under this section is an action against the board. An application or a license holder may not bring the action against an individual board member.
3. The board may not assert reason on appeal for an action by the Board which differs from the reasons specified in the Board's notice of hearing under Rule 604.

#### Rule 607 - Standard of Judicial Review

Judicial review of an appeal filed under Chapter 1704.255 is by trial de novo in the same manner as an appeal from a justice court to a county court.

#### Rule 608 - Effect of Board Order

1. A board order denying an application for a license or renewal of a license, or suspending or revoking a license, becomes final on the 31<sup>st</sup> day after the date the applicant or license holder receives notice of the order unless the applicant or license holder files an appeal under Chapter 1704.255.
2. A board order appealed under Chapter 1704.255 has full force and effect pending determination of the appeal.

### Article VII - Prohibited Conduct and Criminal Penalties

#### Rule 701 - Return of Security

A bail bond surety may not hold security for the payment of a bail bond fee or to assure the principal's appearance in court for more than 30 days after the date on which the owner of the security:

1. Requests return of the security in writing; and
2. Submits to the bail bond surety written evidence of the conclusion of:
  - a. The payment agreement; or
  - b. All of the criminal cases for which the security was given.

Rule 702 - Prohibited Referral of or Employment with Bonding Business; Offense

1. A person in the bonding business may not directly or indirectly give, donate, lend, or contribute, or promise to give, donate, lend, or contribute, money or property to an attorney, police officer, sheriff, deputy, constable, jailer, or employee of a law enforcement agency for a referral of bonding business.
2. A person may not accept or receive from a license holder money, property, or any other thing or value as payment for the referral of bonding business unless the records of the board show that the person is an agent or employee of the license holder.
3. A person may not accept or receive from a license holder money, property, or any other thing of value as payment for employment with a bonding business if, within the preceding 10 years, the person has been convicted of a misdemeanor involving moral turpitude or of a felony.
4. A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Rule 703 - Bail Bond Surety Activity; Offense

1. A person required to be licensed under this chapter may not execute a bail bond unless the person, holds a license issued under this chapter.
2. A person may not advertise as a bail bond surety in a county unless the person holds a license issued under this chapter by a bail bond board in that county. A person does not violate this subsection if the person places an advertisement that appears in more than one county and:
  - a. The advertisement clearly indicates the county or counties in which the person holds a license under this chapter; and
  - b. Any local telephone number in the advertisement is a local number only for a county in which the person holds a license issued under this chapter.
3. A person may not advertise as a bail bond surety unless the person:
  - a. Holds a license issued under this chapter; and
  - b. Lists in the advertisement the county or counties in which the person holds a bail bond surety license.
4. A person commits an offense if the person violates this section. An offense under this section is a Class b misdemeanor.

Rule 704 - Prohibited Recommendations or Solicitations: Offense

1. A bail bond surety or an agent of a bail bond surety may not recommend or suggest to a person for whom the bail bond surety executes a bond the employment of an attorney or law firm in connection with a criminal offense.
2. The following persons may not recommend a particular bail bond surety to another person:
  - a. A police officer, sheriff or deputy;
  - b. A constable, jailer, or employee of a law enforcement agency;
  - c. A judge or employee of a court;
  - d. Another public official; or

- e. An employee of a related agency.
3. A bail bond surety or an agent of a bail bond surety may not solicit bonding business in a police station, jail, prison, detention facility or other place or detainment for persons in the custody of law enforcement.
4. A person may not place a device in a place of detention, confinement, or imprisonment that dispenses a bail bond in exchange for a fee.
5. A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Rule 705 - Bail Bond Receipt and Inspection: Offense

1. A bail bond surety or an agent of a bail bond surety may not receive money or other consideration or thing of value from a person for whom the bail bond surety executes a bond unless the bail bond surety or agent issues a receipt to the person as provided by Rule 705.2.
2. The receipt must state:
  - a. The name of the person who pays the money or transfers the consideration or thing of value;
  - b. The amount of money paid or the estimated amount of value transferred;
  - c. If the person transfers consideration or a thing of value, a brief description of the consideration or thing of value;
  - d. The style and number of the case and the court in which the bond is executed; and
  - e. The name of the person receiving the money, consideration, or thing of value.
3. A bail bond surety or an agent of a bail bond surety shall retain a duplicate copy of a receipt issued under Rule 705.1. The copy of the receipt shall be made available for inspection by:
  - a. A representative of the board in any county in which the bail bond surety is licensed; and
  - b. An appointed representative of a court in which the bail bond surety agrees to execute bail bonds.
4. A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Rule 706 - Records: Offense

1. A person commits an offense if the person falsifies a record required to be maintained under this chapter.
2. An offense under this section is a Class B misdemeanor.

**Article VIII - Miscellaneous**

Rule 801 - Bondsman Services Request Form

The law enforcement agencies of Smith County shall be supplied with forms prepared by the Board to be used by the Defendant in requesting the services of any bondsman. The said forms shall include the name of the bondsman and the manner in which the defendant

became aware of the services of the bondsman and shall be signed by the defendant and the bondman. These forms shall be forwarded to the inmate's file and may be reviewed before renewal licenses are issued. The form provided by the Smith County Jail can be used for the same purpose as described above.

Rule 802 - Effective Date

The Rules and any amendments shall be effective ten (10) days after being approved and posted by the Board.

Rule 803 - Severability

If any provisions of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect either provisions or applications of the Rules which can be given effect without the invalid provision or application, and to this end, the provisions or the Rules are declared severable.

Rule 804 - Conformity Clause

It is the purpose of the rules to conform in their entirety with Chapter 1704 of the Texas Occupations Code. If there be any conflicts between the Rules and the Chapter, the Chapter shall control.