TITLE 38 - SURETIES

CHAPTER 1 - RIGHTS AND REMEDIES OF SURETIES

38-1-101. Requiring suit by creditor.

A person bound as surety in a written instrument for the payment of money, or other valuable thing, may, if right of action accrues thereon, require his creditor by a notice in writing, to commence an action on such instrument forthwith, against the principal debtor; and unless the creditor commences such action within a reasonable time thereafter, and proceed with due diligence, in the ordinary course of law, to recover judgment against the principal debtor for the money or other valuable thing due thereby, and to make by execution the amount thereof, the creditor, or the assignee of such instrument so failing to comply with the requisition of such surety shall thereby forfeit the right which he would otherwise have to demand, and receive of such surety, the amount due thereon.

38-1-102. Requiring suit by creditor; requisition by personal representative of surety.

The executor or administrator of a surety so bound may, in like manner, make such requisition of the creditor, or his executor or administrator, as provided in the preceding section; and in case of failure of the creditor, or his executor or administrator, to proceed as therein required, the executor or administrator, if he make the requisition, shall have the same relief as is therein provided for a surety.

38-1-103. Requiring suit by creditor; what bonds not affected.

Nothing in the last two (2) sections contained shall be so construed as to affect bonds required by law to be given by guardians, executors, administrators, trustees of an express trust, public officers, or any bond or undertaking required by law to be given in an action or legal proceeding in any court in this state.

38-1-104. Rights on paying judgment.

When the surety on a judgment, who is certified therein to be such, or his personal representative pays the judgment, or any part thereof, he shall, to the extent of such payment, have all the rights and remedies against the principal debtor that the

plaintiff had at the time of such payment; and proceedings to revive the judgment shall be as provided in section three hundred and seventy-four, and shall be in the name of such surety or representative; but the plaintiff in the original action shall not be liable for any costs therein.

38-1-105. Application for release by surety of school district treasurer.

A surety of the treasurer of school funds in any school district, organized under the provisions of law, may at any time notify the board of county commissioners of the proper county, by giving at least five (5) days notice in writing, that he is unwilling to continue as surety for such treasurer, and will, at a time therein named, make application to the board of county commissioners to be released from further liability upon his bond; and he shall also give at least three (3) days notice in writing to such treasurer, of the time and place at which the application will be made.

38-1-106. Application for release by surety of school district treasurer; action of commissioners.

The board of county commissioners, upon such notice being given, shall hear the application, and if in their opinion there is good reason therefor, shall require the treasurer to give a new bond, conditioned according to law and to the satisfaction of the board, within such time as they may direct, and if the treasurer fail to execute such bond, the office shall be deemed vacant and shall be immediately filled as other vacancies therein; but such sureties shall not be released or discharged until the filing of the new bond or the expiration of the time allowed therefor; and the cost of such application shall be paid by the person making the same.

38-1-107. Compelling principal to pay debt.

A surety may maintain an action against his principal to compel him to discharge the debt or liability, for which the surety is bound, after the same becomes due.

38-1-108. Action for indemnity before debt due.

A surety may maintain an action against his principal to obtain indemnity against the debt or liability for which he is bound before it is due whenever any of the grounds exist upon which,

by the provisions of this act, an order may be made for arrest, or for an attachment.

38-1-109. Action for indemnity before debt due; obtaining provisional remedies.

In such action the surety may obtain any of the provisional remedies mentioned in division six of this act, upon the grounds and in the manner therein provided.

CHAPTER 2 - SURETY BONDS

38-2-101. Bonds of officers having custody of money; of whom required; conditions.

The state treasurer and the treasurer of each county, city, town, school district, irrigation district, drainage district, and any other public officer having the custody of moneys, shall be required to furnish a bond in the amount required by law, which bond shall be conditioned that he shall faithfully perform all of the duties of his office as prescribed by law, and that he will safely keep all moneys which may come into his hands by virtue of his office, that he will promptly pay over to the person or persons legally authorized to receive the same all such moneys in the manner provided by law, and that he will deliver over to his successor in office all moneys held by him as such officer. Each of the said officers, and his bondsmen and sureties, respectively, shall be responsible for the safekeeping and paying over according to law of all funds which shall come into his hands by virtue of his office.

38-2-102. Sureties and bondsmen on official bonds.

The sureties and bondsmen on such official bonds shall be residents of the state of Wyoming, who shall duly qualify to own property in the state amounting in the aggregate to double the amount of the bond upon which they become sureties. Provided, however, that any surety or guaranty company, duly qualified to act as surety or guarantor in this state upon executing such bonds, shall be accepted in lieu of such sureties.

38-2-103. Payment of premium when bond of state, etc., treasurer furnished by surety company.

When the bond of the state treasurer or of the treasurer of any county, city, town, or school district in this state shall be furnished by a guaranty or surety company, the premium due such

company for furnishing such bond shall be paid out of the public funds of said state, county, city, town, or school district, respectively; and the premium due on the bond of the state treasurer shall be paid out of the contingent fund in his office.

38-2-104. Form of condition of obligation.

All bonds required by the three (3) preceding sections may be conditioned as follows:

"Whereas, the above bounden .... was .... to the office of .... on the .... day of .... A.D., ...

Now, therefore, the conditions of this obligation are such that if the said bounden .... and his deputies shall well and truly perform all the duties of his said office of .... as is or may be prescribed by law and shall with all reasonable skill, diligence, good faith and honesty safely keep and be responsible for all funds coming into the hands of such officer by virtue of his office; and pay over without delay to the person or persons authorized by law to receive the same all moneys which may come into his hands by virtue of his said office; and shall well and truly deliver to his successor in office, or such other person or persons as are authorized by law to receive the same, all moneys, books, papers and things of every kind and nature held by him as such officer, the above obligation to be void; otherwise remain in full force and effect."

38-2-105. Bonds of state, county and municipal officers; payment of premiums.

Any state, county, municipal or district officer required by law or the order of any state, county or municipal council, board or organization to give a bond or other obligation, may include as a part of the lawful expenses of executing and performing the duties of his office, a reasonable sum paid a company authorized under the laws of this state to become his surety on the bond or obligation. He may pay the sum or expense from any contingent or other fund furnished by the state, county, municipality or organization for the payment of the lawful expenses of the officer or may upon proper presentation of a claim for the sum or expense, have it paid by any state, county or municipal council, board or organization that ordered and directed the bond or obligation to be furnished.

38-2-106. Bonds of state, county and municipal officers; release of sureties.

Any surety upon the bond of any state, county or municipal officer shall be released from further liability of such surety for such officer, by filing with the person or persons having authority to approve said bond, or with whom said bond is directed to be filed, a notice that said surety is unwilling longer to be security for such state, county or municipal officer. When any notice shall be filed as aforesaid, notice thereof shall immediately be given to such state, county or municipal officer, who shall thereupon file within fifteen (15) days other security to be approved as provided by law. If said state, county or municipal officer shall not in the manner aforesaid file such bond to be approved as aforesaid, the said office shall become vacant and the said vacancy shall be filled in manner as is now provided by law. If a new bond shall be given by any officer, as hereinbefore provided, then the former surety or sureties shall be entirely released and discharged from all liability incurred by such officer after the time of the approval of said new bond, and the sureties to the new bond shall henceforth be liable as therein provided, after the approval of said new bond as aforesaid. The officer, officers, board or official body where or with whom said original bond was filed, shall have power to declare any office or offices vacant as hereinbefore provided; provided, that no surety shall be released from further responsibility until the office shall be declared vacant or a new bond approved by the proper authority.

38-2-107. Bonds of fiduciaries; payment of premium includable as expense of trust.

Any receiver, assignee, guardian, trustee, committee, executor, administrator or curator or other fiduciary required by law or the order of any court or judge to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under the laws of this state so to do, for becoming his surety on such bond, as may be allowed by the court in which or a judge before whom he is required to account, on bonds of one thousand dollars ($1,000.00) or more, not exceeding one-half of one percent per annum; on bonds of less than one thousand dollars ($1,000.00), not to exceed the sum of five dollars ($5.00).

38-2-108. Bonds of fiduciaries; release of sureties.

The surety or the representative of any surety upon the bond of any trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary, may apply by petition to the court wherein such bond is filed, or which may have jurisdiction of such trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary, or to a judge of said court praying to be relieved from further liability as surety, for the acts or omissions of the trustees, committee, guardian, assignee, receiver, executor or administrator or other fiduciary which may occur after the date of the order relieving such surety, to be granted as herein provided for, and to require such trustee, committee, guardian, assignee, receiver, executor or other fiduciary to show cause why he should not account and such surety be relieved from such future liability, as aforesaid, and such principal be required to give a new bond, and thereupon, upon the filing of such petition, the court, or a judge thereof, shall issue such order, returnable at such time and place, and to be served in such manner, as such court or judge may direct, and may restrain such trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary from acting, except in such manner as it may direct to preserve the trust estate; and upon the return of such order to show cause, if the principal in the bond account in due form of law and file a new bond duly approved, then such court or judge must make an order releasing such surety filing the petition, as aforesaid, from liability upon the bond for any subsequent act or default of the principal, and in default of such principal thus accounting and filing such new bond, such court or judge must make an order, directing such trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary to account in due form of law, and that if the trust fund or estate shall be satisfactorily accounted for and delivered or properly secured, such surety shall be discharged from any and all further liability as such, for the subsequent acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary, after the date of such surety being so relieved and discharged, and discharging such trustee, committee, guardian, assignee, receiver, executor or administrator.

38-2-109. Recovery of premium as part of costs in actions and proceedings.

In all actions and proceedings wherein the parties thereto have furnished any bond, recognizance, undertaking, stipulation or other obligation, paying therefor to any company so authorized

to do, a premium for such bond or obligation, such party, if entitled to recover costs in said action, shall be allowed and may tax and recover such sum paid such a company for executing any bond, recognizance, undertaking, stipulation or other obligation therein, not exceeding however, one-half of one percent on the amount of such bond, recognizance, undertaking, stipulation or other obligation on bonds of one thousand dollars ($1,000.00) or more during each year the same has been in force; on bonds less than one thousand dollars ($1,000.00), not to exceed the sum of five dollars ($5.00).

CHAPTER 3 - SURETY COMPANIES

38-3-101. Execution of bonds.

Whenever any bond, undertaking, recognizance or other obligation is by law, or the charter, ordinances, rules or regulations of any municipality, board, body, organization, court or public officer, required or permitted to be made, given, tendered or filed, with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company qualified to act as surety or guarantor as hereinafter provided, and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every requirement of law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one (1) surety or by one (1) or more sureties or that such sureties shall be residents or householders, or freeholders or either, or both, or possess any other qualification; and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character, shall accept and treat accordingly such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule or regulation.

38-3-102. Requiring bond with company unauthorized to transact business.

It shall hereafter be unlawful for any person, association or corporation, foreign or domestic, to require any person in his or its employ to make or execute, or to procure to be made or executed, any bond or undertaking for the faithful discharge of

his duties, or upon any other consideration, with any corporation not organized under the laws of the state of Wyoming, as surety thereon, unless said corporation shall first have complied with the laws of the state of Wyoming, authorizing it to transact business therein.

38-3-103. Requiring bond with company unauthorized to transact business; bonds with such surety void.

All bonds and undertakings entered into by any citizen or resident of the state of Wyoming, with any such organization as surety, touching or affecting any services to be rendered or acts to be performed in the state of Wyoming, in whole or in part, unless such corporation shall first have complied with the laws of the state of Wyoming, shall be void.

38-3-104. Execution of bonds; penalty.

Any person, association or corporation which shall exact or require of any person, or make it a condition of employment, or the retention of employment, that he make or execute any bond or undertaking with any such corporation, having so failed to comply with the laws of the state of Wyoming, entitling it to transact business therein, as surety thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars ($100.00), and not more than one thousand dollars ($1,000.00).