

SURETIES

540.1 Requiring creditor to sue.

When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that the principal is about to become insolvent or remove permanently from the state without discharging the contract, the surety may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost.

[C51, § 970; R60, § 1819; C73, § 2108; C97, § 3064; C24, 27, 31, 35, 39, § **9457**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 540.1]

Footnotes

Order of liability, R.C.P. 1.956

Right of subrogation, § 626.19

540.2 Refusal or neglect of creditor.

If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish the surety with a true copy of the contract or other writing therefor, and enable the surety to have the use of the original when requisite in such action, the surety shall be discharged.

[C51, § 971; R60, § 1820; C73, § 2109; C97, § 3065; C24, 27, 31, 35, 39, § **9458**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 540.2]

540.3 Suit by surety.

When the surety commences such action, the surety shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages.

[C51, § 972; R60, § 1821; C73, § 2110; C97, § 3066; C24, 27, 31, 35, 39, § **9459**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 540.3]

540.4 Executor official bonds.

The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians.

[C51, § 973; R60, § 1822; C73, § 2111; C97, § 3067; C24, 27, 31, 35, 39, § **9460**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 540.4]