

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 1453 (Chair, Judiciary Committee and Chair, Economic Matters Committee) (By Request – Departmental – Insurance Administration, Maryland)
 Judiciary and Economic Matters

Bail Bonds - Bail and Bail Bondsmen - Licensure and Regulation

This departmental bill makes several changes to the current bail system by requiring the licensure of property bail bondsmen by the Maryland Insurance Administration and the appointment of a bail bond commissioner for each of the judicial circuits. The bill repeals specific public local laws and establishes that any other laws inconsistent with the bill are repealed to the extent of the inconsistency.

The bill takes effect January 1, 2009.

Fiscal Summary

State Effect: Special fund expenditures increase by \$36,300 to fund one additional investigator position for MIA, which accounts for the bill’s January 1, 2009 effective date. Future year expenditures reflect annualization and inflation. Potentially significant general fund expenditure increase for the Judiciary, with the amount depending on the extent to which additional staff is required to fill bail bond commissioner positions. Minimal increase in special fund revenues for MIA from application fees.

| (in dollars) | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|----------------|------------|------------|------------|------------|------------|
| SF Revenue | - | - | - | - | - |
| GF Expenditure | - | - | - | - | - |
| SF Expenditure | 36,300 | 65,000 | 68,300 | 71,700 | 75,300 |
| Net Effect | (\$36,300) | (\$65,000) | (\$68,300) | (\$71,700) | (\$75,300) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The State would fund the bail bond commissioners in each circuit.

Small Business Effect: The Maryland Insurance Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below.

Analysis

Bill Summary: The bill repeals both the authority of circuit courts to adopt rules in connection with bail bonds and bail bondsmen and a provision stating that any violation of the rules is contempt of court. The bill establishes that a bail bond must be posted by executing it in the penalty amount and depositing with the clerk the greater of 10% of the penalty amount or \$25. The bill requires each circuit administrative judge to designate a bail bond commissioner for the circuit to be reimbursed by the State as provided in the State budget. A bail bond commissioner, under supervision of the circuit administrative judge or the Chief Judge of the District Court, or the Chief Judge of the District Court is to ensure that rules, statutes, and other laws relating to bail bonds are followed. The bill repeals a requirement that a clerk may not accept security for bail unless the person makes certain statements under oath and the clerk is satisfied that the statements are true.

The bill repeals certain authorizations and requirements for property bail bondsmen and eliminates statutory distinctions between property bail bondsmen and surety bail bondsmen.

The bill repeals the authority of a District Court commissioner, following a defendant's failure to appear and surrender according to the conditions of a bond, to declare a bond forfeited and order the immediate arrest of the accused without warrant if the accused is within the State.

The bill establishes if an order of forfeiture remains unsatisfied after specified time limits, the Attorney General may refer the matter to the State Collection Unit to foreclose the declaration or deed of trust or for other recoupment of the amount unsatisfied. A bail bond commissioner or the Chief Clerk of the District Court may refer any accommodation bonds that remain unsatisfied after specified time limits to the State Collection Unit for recoupment. The bill requires the Central Collection Unit to be responsible for the collection of any property or amounts referred as a result of this bill's provisions.

The bill prohibits a person from engaging in the business of bail bonds in a criminal case unless the person is licensed in accordance with statutory requirements as set forth in the Insurance Article. The Insurance Article defines a "bail bondsman" as an insurance producer who is licensed according to the article to sell property and casualty insurance

and provides bail bond services. The bill excludes from the definition of “bail bondsman”:

- a defendant who guarantees his or her own court appearance;
- an individual who, not more than three times in a calendar year, provides bail bond services for a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece without compensation; or
- a person, expressly authorized by the court, acting for a defendant without compensation.

The bill establishes that providing bail bond services includes, in connection with a judicial proceeding:

- executing a bail bond as a surety or as an insurance producer for a surety;
- negotiating a bail bond;
- pledging personal or real property to secure a bail bond;
- procuring a bail bond;
- selling a bail bond;
- soliciting a bail bond; or
- otherwise effectuating a bail bond.

The Insurance Commissioner is authorized to deny a license to an applicant, or suspend, revoke, or refuse to renew or reinstate a license after proper notice and opportunity for a hearing, if the applicant or holder of the license has violated conditions of pretrial release or has failed to pay over on demand money that belongs to any governmental unit entitled to the money.

The bill repeals the requirement that a licensed bail bondsman must annually certify to the Commissioner that the majority of his or her income is from providing bail bondsman services.

Current Law: A circuit court may adopt rules setting the terms and conditions of bail bonds filed in that court and rules on the qualifications of and fees charged by bail bondsmen. A circuit court may appoint a bail bonds commissioner. The State’s Attorney may order a writ of execution to be issued for the sum due if a recognizance taken for the appearance of a person to answer or testify is forfeited.

Following a defendant's failure to appear and surrender according to the conditions of a bond, a judge or a District Court commissioner must declare the bond forfeited and order the immediate arrest of the accused without a warrant if the accused is within the State.

A person may not engage in the business of becoming a surety for compensation on bail bonds in criminal cases unless the person is approved in accordance with any applicable circuit court rules and, if required, licensed according to the Insurance Article. An individual must obtain a property and casualty insurance provider license, take an exam, and pass applicant screening in order to obtain the license. Individuals may lose their license and are subject to regulation by the Insurance Commissioner. Among other restrictions, the Insurance Commissioner is authorized to deny a license to an applicant, or to suspend, revoke, or refuse to renew or reinstate a license after proper notice and opportunity for a hearing, if the applicant or holder of the license has failed or refused to pay over on demand money that belongs to an insurer, insurance producer, or other person entitled to the money. There is no similar regulatory structure for property bondsmen.

A bail bondsman must certify to the Commissioner on an appropriate form that the majority of the bail bondsman's income is from providing bail bondsman services.

Background: After judicial auditors raised concerns about the administration of the property bail bonds system in Maryland, Chief Judge Bell issued an administrative order in 2003 establishing a bail system task force. This bill emerges from recommendations from that task force. MIA advises that standardizing the licensing requirements for all bail bondsmen will bring uniformity to the basic activity of securing bail bonds by eliminating the distinction of whether the bond is secured through a licensed surety or through property.

A bail bondsman as defined in the Insurance Article is an authorized insurance producer of a surety insurer. Surety insurers are individuals, who, for compensation directly or through an authorized insurance producer, act as a surety or guarantee on a bail bond. Such individuals must hold a valid certificate of qualification from the Insurance Commissioner. Property bail bondsmen are generally individuals who, for a fee, encumber one or more parcels of real estate with the State of Maryland to satisfy the requirement of a bail bond. This proposal will also appropriately prevent individuals who may no longer be eligible to act as a surety bondsman from conducting the same activity as a property bondsman.

The Judiciary advises that of the 1,055 individuals currently on the District Court list as bail bondsmen, approximately 146 are property bondsmen. The Judiciary cautions that

this list includes any individual who has ever been treated as a property bondsman and may include individuals who are no longer active.

State Revenues: Special fund revenues increase minimally for the Maryland Insurance Administration due to application fees from individuals who apply to be licensed as a property bail bondsman. MIA advises fees are generally set at \$54 for any license application. It is unknown how many individuals will apply for a license, but any impact on revenues is expected to be minimal. *For illustrative purposes only*, if each of the estimated 146 property bail bondsmen apply for a license, revenues would increase by \$7,884 annually.

State Expenditures: The Maryland Insurance Administration advises that it would use current personnel to review applications and require two new investigators to track and investigate the increased number of newly licensed property bail bondsmen. Due to the relatively low number of current property bail bondsmen, DLS estimates that this could be accomplished with one investigator. Accordingly, special fund expenditures could increase by an estimated \$36,316 in fiscal 2009, which accounts for the bill's January 1, 2009 effective date. This estimate reflects the cost of hiring one investigator to track and investigate the increased number of newly licensed property bail bondsmen. It includes a salary, fringe benefits, and ongoing operating expenses.

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|---|-----------------|
| Salary and Fringe Benefits | \$31,665 |
| Operating Expenses | <u>4,651</u> |
| Total FY 2009 State Expenditures | \$36,316 |

Future year expenditures reflect • a full salary with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Expenditures for the Judiciary would increase due to the bill's provision that a bail bond commissioner be appointed for each of the eight judicial circuits to be reimbursed by the State. The Judiciary advises that some of the circuits will be able to absorb the workload with existing resources and can designate an existing staff member to serve as bail bond commissioner. The Judiciary advises that the 7th circuit is the only circuit with a bail bond commissioner. This commissioner is paid a salary of \$75,000 by Prince George's County. General fund expenditures would increase to the extent that additional staff is needed in other circuits and to absorb the salary of the existing 7th circuit bail bond commissioner. The Judiciary advises it cannot accurately predict at this time which of the circuits would need additional staff. Accordingly, total expenditures cannot be reliably estimated beforehand. It is expected that any training costs associated with

newly appointed bail bond commissioners could be handled with existing budgeted resources.

Local Fiscal Effect: Under the bill's provision requiring reimbursement by the State for bail bond commissioners, Prince George's County expenditures would decrease due to the reimbursement required by the State.

Small Business Effect: Potential minimal. Small businesses that offer property bail bonds would now be subject to licensing by MIA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Department of Legislative Services

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mll/jr

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510