

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 841

(Senator Conway)

Finance

Bail Bonds - Surety Bondsmen - Licensure, Regulation, and Financing of Bail Bonds

The bill requires a property and casualty insurance producer's license from the Insurance Commissioner in order to provide bail bond services in the State, with the exception of a property bondsman. The bill allows a premium finance company to finance bail bonds through an agreement with a licensed bail bondsman and requires the Insurance Commissioner to adopt related regulations. The bill authorizes the Commissioner to discipline a licensee for violating specified provisions of law governing bail bond services. The bill repeals all laws or parts of laws, public general or public local, that are inconsistent with the bill's provisions.

The bill does not affect any bail bond that, as of December 31, 2010, has not been discharged and does not affect the forfeiture of any bail bond on or before December 31, 2010, or any enforcement action pending with respect to the forfeiture or any action pending as to the striking of the forfeiture of a bail bond.

The bill takes effect January 1, 2011.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues and expenditures to the extent licensed surety insurers establish premium finance companies. Potential minimal increase in general fund revenues due to imposition of existing penalty provisions.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a “bail bondsman” as an insurance producer who is licensed by the Insurance Commissioner to sell property and casualty insurance and provides bail bond services. A “bail bondsman” does not include:

- a defendant who guarantees the defendant’s own appearance in accordance with the Criminal Procedure Article;
- an individual who, no more than three times per year, provides bail bond services for a specified relative and is not compensated for any of those services;
- a property bondsman who executes a bail bond secured by real estate in the State in accordance with the Criminal Procedure Article; and
- a person acting for a defendant without compensation in accordance with the Criminal Procedure Article.

Under the bill, 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, pledging personal or real property to secure a bail bond, negotiating, procuring, selling, or soliciting a bail bond, financing a bail bond through a premium finance company, or otherwise effectuating a bail bond. The bill expands the definition of a surety to include a person who provides any service in the bail bondsman trade even if the person is not compensated for the service.

Current Law: A “bail bondsman” is defined as an authorized insurance producer of a surety insurer who must obtain a license from the Insurance Commissioner prior to providing bail bondsman services in the State. A “property bondsman” is a person other than a defendant who executes a bail bond secured by real estate in the State. A person who acts as a property bondsman for compensation must provide the court with documentation of ownership, tax status, and liens against the property posted.

A circuit court may adopt rules and regulations setting the terms and conditions of bail bonds filed in that court and rules establishing the qualifications of, and fees charged, by bail bondsmen. Notwithstanding any other law or rule to the contrary, if expressly authorized by the court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the court (1) the greater of 10% of the penalty amount; or (2) \$25.

On the grounds of a courthouse or correctional facility, a bail bondsman or an agent of a bail bondsman is prohibited from:

- approaching, enticing, or inviting a person to use the services of a bail bondsman;

- distributing, displaying, or wearing an item that advertises the services of a bail bondsman; or
- soliciting business as a bail bondsman.

A person who violates the aforementioned restrictions on the activities of a bail bondsman is guilty of a misdemeanor and on conviction is subject to a fine of up to \$100 for a first offense and a fine of up to \$1,000 for a subsequent offense. Upon conviction, the violator must be referred to the Commissioner for appropriate action. The Commissioner may take certain disciplinary actions against an insurance producer for specified violations of the Insurance Article. Actions the Commissioner may take include the suspension, revocation, or refusal to renew or reinstate a license upon providing the insurance producer with notice and opportunity for a hearing.

A “premium finance agreement” is defined as an agreement (1) by which an insured or prospective insured promises to pay a premium finance company the amount advanced or to be advanced, together with interest and a service fee, to an insurer or an insurance producer in payment of premiums; and (2) that contains an assignment of or is otherwise secured by the unearned premium or refund obtainable from the insurer on cancellation of the insurance contract.

The finance charge and initial service fee that a premium finance company may assess include all interest, fees, and charges incident to the premium finance agreement and the resulting extension of credit. The allowable finance charge under a premium finance agreement is 1.15% for each 30 days, charged in advance. The finance charge is computed on the amount of the entire premium loan advanced, including taxes and fees, after the insured’s down payment, if any, from the insurance contract’s date of inception or the premium’s due date. For certain automobile insurance premium financing agreements, premium finance companies typically require a down payment ranging from 11% to 15% of the premium with 10 additional installment payments to pay the outstanding balance owed.

The maximum initial service fee permitted is \$20 for actual expenses. The fee is not refundable on cancellation or repayment. In addition, a premium finance company may charge an electronic payment fee of up to \$8 for actual expenses incurred if the insured elects to pay the premium finance company with an electronic payment, including payment by credit card or debit card.

Additional Information

Prior Introductions: None.

Cross File: HB 1489 (Delegates Haynes and Kirk) - Rules and Executive Nominations.

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

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