

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 911 (Senator Feldman)
 Finance

Insurance - Bail Bondsmen - Installment Agreements and Premium Rates

This bill requires a bail bondsman who accepts a premium charged for a bail bond in installments to (1) require the principal on the bond or any indemnitor to make a down payment of at least 35% of the total premium due and (2) execute the installment agreement for the remaining balance that is due. The bill also specifies that the term of any installment agreement must be for 15 months or less and requires a bail bondsman to file a civil action in the event of specified unpaid or late payments. Before the tenth day of each month, each bail bondsman must make a specified certification to the Insurance Commissioner concerning its installment agreements. Finally, the bill requires each surety insurer to audit all of its bail bondsmen in a specified manner every 6 months to ensure the bondsmen are complying with the bill’s requirements and existing provisions that govern installment payments.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund expenditures increase by \$56,000 in fiscal 2017 for staff needed to track bondsmen certifications and audit reports. Future year expenditures reflect annualization and the elimination of one-time costs. MIA special fund expenditures further increase to investigate any audit reports and additional complaints it receives related to bail installment agreements; however, the magnitude of such an impact cannot be reliably estimated. Any additional bail reviews and case filings that occur before the Judiciary as a result of the bill can be handled with existing budgeted resources. Revenues are not materially affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	56,000	69,400	72,200	75,100	78,100
Net Effect	(\$56,000)	(\$69,400)	(\$72,200)	(\$75,100)	(\$78,100)

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

Local Effect: Any additional case filings that occur before circuit courts as a result of the bill can be handled with existing budgeted resources. Any impact on local detention costs – due to more defendants not being able to be released on bail because the bill establishes a minimum down payment (35% of the premium due) and a maximum financing term (15 months) – cannot be reliably estimated. Revenues are not materially affected.

Small Business Effect: Meaningful. Bail bondsmen are required to accept 35% of the total premium due for an installment plan, file civil actions for specified unpaid and late payments, and certify their activities to the Commissioner each month.

Analysis

Bill Summary: If the remaining balance of an installment agreement premium is not paid in full by the due date of the final payment, or if any payment due under the agreement is overdue by more than 60 days, the bail bondsman must file a civil action with the appropriate court within 75 days after the final payment was due. The bail bondsman must make a diligent effort to obtain judgment after filing the civil action, unless good cause is shown for failure to obtain a judgment, including (1) the filing of bankruptcy by the principal or indemnitor or (2) the failure to serve process despite good faith efforts.

By the tenth day of each month, each bail bondsman must certify to the Commissioner that the premium for each bail bond executed in the preceding month met the approved rate and that the bail bondsman has met all other requirements for premium installment payments of bail bonds. The certification must be under oath and on a form the Commissioner requires. The filing of a false certification is grounds for administrative action by the Commissioner.

Each surety insurer must audit each of its appointed bail bondsmen every six months for the periods from January 1 through June 30 and July 1 through December 31. The audit must determine whether the bondsmen are charging the statutorily required premium rate and meeting the other statutory requirements for premium installment payments of bail bonds. Within 45 days after the close of an audit period, a surety insurer must notify the Commissioner of any violations found in the audit in a specified manner.

Current Law/Background:

Premium Installment Payments for Bail Bonds

Chapters 243 and 244 of 2012 authorized a bail bondsman to accept installment payments for a bail bond premium. If a bail bondsman agrees to accept installment payments, the bail bondsman must (1) include specified information in the installment agreement; (2) secure a signed affidavit of surety by the defendant or the insurer containing the same information included in the installment agreement and provide it to the court; (3) take all necessary steps to collect the total amount owed, including any debt collection remedies provided by law; (4) keep and maintain records of all collection attempts, installment agreements, and affidavits of surety; and (5) certify each year to the Insurance Commissioner that the maintained records are accurate and true.

The aforementioned installment agreement and signed affidavit of surety must include (1) the total amount of the premium owed; (2) the amount of any down payment; (3) the balance amount owed to the bail bondsman or the bail bondsman's insurer; (4) the amount and due date of each installment payment; and (5) the total number of installment payments required to pay the amount due. A bail bondsman must keep and maintain these records in an office that is generally accessible to the public during normal business hours and must make them available for inspection by the Commissioner.

Under insurance law, the Commissioner may suspend, revoke, or refuse to renew or reinstate a bail bondsman's license after notice and opportunity for a hearing if the bondsman violates any provision that governs the acceptance of installment payments for bail bonds.

Maryland Insurance Administration – Complaints

MIA has previously advised for a similar bill that it has received and investigated numerous complaints about bail bondsmen making misrepresentations to the District Court concerning the percentage of the premium they are collecting from the principal or indemnitor. Furthermore, bail bondsmen may not always make legitimate attempts to collect the remaining balance owed them, which is required by Chapters 243 and 244 of 2012. Industry competition has created a situation where some bondsmen may make under-the-table deals with defendants in which it is agreed upon that the defendant only pay a portion of the 10% premium. The bondsmen may then fabricate a paper trail to indicate the establishment of an installment contract. The bondsmen make a lower percentage than they normally would, but the practice provides for a competitive edge, which allows for greater volume to counteract the lower collected premium. MIA estimates that there are approximately 1,000 to 1,500 bail bondsmen in the State.

Bail Bonds – Generally

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

If the defendant uses a surety company, the company/bail bondsman executes a power of attorney with the court in an amount sufficient to cover the full penalty amount should the defendant fail to appear. In return, the surety company receives a premium from the defendant equal to 10% of the full penalty amount. Premiums paid to surety companies are nonrefundable.

If a defendant fails to appear in court as required, the court orders the forfeiture of the bond in the full penalty amount and issues a warrant for the defendant’s arrest. If the defendant or surety can show that there were reasonable grounds for the failure to appear, a judge may strike the forfeiture in whole or in part. Where a surety executed the bond with the defendant, the surety has 90 days to satisfy the bond by either producing the defendant or by paying the penalty amount of the bond. The court may extend this period to 180 days for good cause shown.

Bail Bond Premium Installment Payments in Connecticut

Connecticut requires surety bail bond agents to collect at least 35% of the total premium on any installment agreement in a similar fashion as that proposed by the bill. In that state, bail bond agents are also required to make diligent efforts to collect all amounts due under any premium finance agreement.

State Expenditures: MIA special fund expenditures increase by \$56,002 in fiscal 2017, which accounts for the bill’s October 1, 2016 effective date, to hire one insurance analyst to track the monthly certifications and any audit reports from surety insurers; existing MIA staff can then investigate any audit findings as necessary. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$51,187
Operating Expenses	<u>4,815</u>
Total FY 2017 State Expenditures	\$56,002

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The bill may also result in (1) additional complaints that have to be investigated by MIA until bail bondsmen begin to follow the stricter 35% collection that must be paid upfront for installment payment plans and (2) the investigations of bondsmen based on the audit reports submitted by surety insurers. If so, special fund expenditures further increase; however, a reliable estimate of the magnitude cannot be made at this time.

This analysis does not account for any impact on detentions in Baltimore City due to more defendants not being able to be released on bail because the bill establishes a minimum down payment (35% of the premium due) and a maximum financing term (15 months). Any such impact on general fund expenditures cannot be reliably estimated.

Additional Information

Prior Introductions: HB 1050 of 2015, a bill with similar provisions, received an unfavorable report from the House Judiciary and Economic Matters committees.

Cross File: None.

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

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