HB 678

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 678 (Delegate Branch)
Economic Matters Finance

Surety Insurance - Application for Bonds

This bill authorizes a surety insurer to make an inquiry about a surety bond applicant's race, creed, color, or national origin if the application is for a bail bond or an immigration bond.

Fiscal Summary

State Effect: None. The bill does not affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: The Insurance Article defines "surety insurance" to include fidelity insurance, insurance that guarantees the performance of contracts other than insurance contracts, and insurance that guarantees the execution of bonds, undertakings, and contracts of suretyship. Both bail bonds and immigration bonds are a type of surety insurance.

Bail Bonds

Bail is intended to ensure the presence of a 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. A corporate surety bail bondsman (corporate bondsman) must be licensed by the Maryland Insurance Administration and have an appointment from an insurance company.

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 and may be financed if other specified conditions are met.

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.

Immigration Bonds

The U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) division was established as one of three DHS agencies charged with administering the nation's immigration system. According to ICE, an immigration bond is posted as security for performance and fulfillment of a bonded alien's obligations to the government. ICE only authorizes surety companies to provide these types of bonds if the company holds a certificate of authority to act as a surety on federal bonds. Commonly, these types of bonds are issued to secure the release of an alien who has been detained by ICE, while the bond ensures that he or she will appear for any future immigration proceedings.

Bail Bonds and Immigration

In 2012, the Maryland Court of Appeals considered whether a bond should be released and a corporate surety released from liability when a defendant fails to appear due to actions of the Department of Public Safety and Correctional Services and/or the federal government. The consolidated case (*Big Louie Bail Bonds, LLC v. State of Maryland, et al*., No. 31, September Term 2012) involved a Baltimore-based corporate surety who challenged whether it had to pay $100,000 in bail forfeitures in Baltimore County after 10 of its clients were deported before their criminal trials. The lower courts ruled against the corporate surety on the premise that the surety knew or should have known that their clients had a high risk of deportation.

The Court of Appeals reversed the lower courts' decision and held that a corporate surety should be released from liability when its clients are deported. Specifically, the court noted that, if the defendants in the case had been extradited to another state for criminal acts committed in that state, reasonable grounds would have been met to release the surety from liability and there is no basis for distinguishing extradition to another state from deportation.

Additional Information

Prior Introductions: None.

Cross File: SB 470 (Senator Reilly) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Maryland Insurance Administration, U.S. Department of Homeland Security, Department of Legislative Services

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