

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 489

(Senator Astle)

Finance

Judiciary and Economic Matters

Bail Bondsmen - Acceptance of Installment Contracts

This bill authorizes a bail bondsman to accept installment payments for a bail bond premium. If a bail bondsman violates any provision of the bill, the Insurance Commissioner may take specified actions authorized under the Insurance Article.

Fiscal Summary

State Effect: Enforcement can be handled with existing resources. Imposition of existing monetary penalties is not likely to materially affect State revenues.

Local Effect: None.

Small Business Effect: Minimal. The bill codifies a practice already prevalent among bail bondsmen; however, the records retention and certification requirement may minimally increase expenditures.

Analysis

Bill Summary: 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 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 the records required under the bill in an office that is generally accessible to the public during normal business hours and must make the records available for inspection by the Commissioner.

Current Law/Background: 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.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer. If authorized by the court, a defendant may be released after posting cash equal to 10% of the full penalty amount or \$25, whichever is greater. However, security for a greater percentage of the penalty amount, up to the full amount of the bail, may be required by the judicial officer. When the defendant is unable to post the amount required, as is often the case, the defendant may seek the assistance of a bail bondsman to obtain a corporate surety or lien on the bondsman's real property to secure the bond with the defendant. The bail bondsman typically charges a fee equal to 10% of the required bail bond amount for this service. If a defendant deposits cash with the court and complies with his/her pretrial release, the deposit is refundable. Fees paid to bail bondsmen are not refundable.

A surety bail bond is a financial guarantee to the court that the defendant will appear in each and every court appearance as the court directs. A corporate surety bail bondsman (corporate bondsman) must be licensed by the Maryland Insurance Administration (MIA) and have an appointment from an insurance company. Like other licensees, the Commissioner may deny a license or discipline a corporate bondsman for a variety of reasons, including the willful violation of a State insurance law or any fraudulent or dishonest practice in the insurance business. Once licensed and appointed, a corporate bondsman acts as an agent on behalf of the insurance company and pays a small premium to the insurance company for each surety bond. A corporate bondsman charges the defendant 10% of the bail bond, an amount that must be filed with and approved by the Commissioner.

Corporate bondsmen post bail by executing the bail bond as the agent or attorney in fact for the insurance company, which is liable to the State as the surety on the bail bond. Corporate bondsmen post bail by filing a Power of Attorney with the court with a clearly stated monetary limit that will cover the entire amount of the bail. The Chief Clerk of the District Court maintains a list of all bail bondsmen authorized to write bail bonds in the State and the limit for any one bond specified in the bail bondsman's general Power of Attorney on file with the Chief Clerk. No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the authorized bondsmen list and the bond is within the limit specified in the bondsman's general Power of Attorney as shown on the list, unless a special Power of Attorney is filed with the bond.

There is no statute prohibiting bail bondsmen from accepting installments for the premium charged for a bail bond. However, the practice was the subject of *Insurance Commissioner for the State v. Engelman*, a 1997 Maryland Court of Appeals case. In *Engelman*, the court held that a bondsman is not prohibited from accepting promissory notes or other types of credit arrangements, with or without interest. MIA had alleged that, by failing to collect the entire amount of surety bond premiums at the time the bonds were written, *Engleman*, a bondsman, had violated several provisions of the Insurance Article. (At the time of the decision, the relevant statutes were found at Article 48A, §§ 226(a), 230(b), and 242(e); however, the statutes are now located at Insurance Article §§ 27-212 and 27-216(b)(1).) The provisions in question prohibit insurance rebates and the collection of an insurance premium different than the rate filed with the Insurance Commissioner. The court reasoned that there was no violation as long as a bondsman attempts to collect the unpaid portion of the premiums. In other words, the statutes require that a bondsman collect the approved rate filing but do not require a specific method of collecting a premium.

While the court's decision solidified a bondman's ability to set up installment payments, by basing its opinion on the assumption that the bondsman "used every effort to collect the balances due under the notes," it made clear a bondsman must make attempts to collect the entire amount to avoid violating the Insurance Article. Unfortunately, a bondsman does not always make legitimate attempts to collect this remaining portion. Industry competition has created a situation where bondsmen make under-the-table deals with defendants where it is agreed upon that the defendant only pay a portion of the 10% premium. The bondsman then fabricates a paper trail to indicate the establishment of an installment contract. The bondsman makes a lower percentage than he or she normally would, but the practice provides for a competitive edge, which allows for greater volume to counteract the lower collected premium. This is a clear violation of the Insurance Article's anti-rebate statute and the requirement that an insurance company's premium equal the rate filed with the Insurance Commissioner. With the knowledge that this practice occurs and is a violation of law, the issue stops being one of statute interpretation and becomes one of enforcement.

Currently in Maryland, a bondsman must “maintain records of all bail bonds executed, in sufficient detail to enable the Insurance Commissioner to obtain all necessary information concerning each transaction.” The bondsman must make these records available for inspection by the Insurance Commissioner for at least one year after the end of the surety liability. The difficulty lies in proving that a bondsman did not make legitimate attempts to collect any unpaid portion.

Maryland is not the only state where bail bond financing has become an issue. Several other states attempted to address the issue in their 2011 legislative sessions. A string of domestic violence incidents involving defendants able to secure bail with as little as no money down paid to bail bondsmen led Connecticut legislators to reform the state’s bail bond process. The Connecticut law, Public Act No. 11-45, requires that a bondsman provide a monthly certification, under oath, that the premium charged for each bail bond matches the approved premium rate approved by the insurance commissioner and an annual certification listing the total amount of bail bonds executed and the total amount of premiums collected in the preceding year. Perhaps more important, the Connecticut law requires that a bondsman collect at least 35% of the premium when collecting a down payment and requires that the bondsman file a civil court action seeking appropriate relief if the remaining portion is not paid within 75 days of its due date.

In 2011, Arkansas legislators considered two bills regarding bail bond financing. One explicitly allowed the acceptance of installment payments (HB 1246) while the other (HB 2169) explicitly forbade it. A joint committee was scheduled to study the issue during the 2011 interim. Finally, a failed Idaho bill introduced in 2011 would have required bondsmen to collect the entire 10% bail bond premium upon a defendant’s release. However, the bill did not prohibit third parties from providing financing. According to the bill’s fiscal note, the bill’s intent was to “require bail agents to compete on the basis of service as opposed to which bail agent can get a defendant released for the least up front expenditure and improve the professionalism of bail agents by prohibiting the marketing message of ‘get out of jail free’.”

Additional Information

Prior Introductions: A similar bill, HB 898 of 2011, received a hearing from the House Judiciary Committee, but it received no further action. Its cross file, SB 686, received a hearing from the Senate Finance Committee, but it received no further action

Cross File: HB 742 (Delegate Barnes) - Judiciary and Economic Matters.

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

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