HB 1050

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1050 (Delegate Jalisi)
Judiciary and Economic Matters

Insurance - Bail Bondsmen - Installment Agreements

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 bail bondsmen to file a civil action in the event of specified unpaid or late payments.

Fiscal Summary

State Effect: 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. Maryland Insurance Administration special fund expenditures likely increase to investigate any additional complaints it receives related to bail installment agreements as a result of the bill. Revenues are not materially affected.

Local Effect: Any additional case filings that occur before circuit courts as a result of the bill can be handled with existing budgeted resources. 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 and file civil actions for specified unpaid and late payments.

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 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.

Current Law/Background: Chapters 243 and 244 of 2012 authorized bail bondsmen 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.

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.

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: The Maryland Insurance Administration (MIA) advises that it has recently 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 a bondsman 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 bondsman may then fabricate 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. Therefore, the bill may result in 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. If so, special fund expenditures increase; however, a reliable estimate of the magnitude cannot be made at this time.

Additional Information

Prior Introductions: None.

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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