

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 924

(Senator Serafini)

Finance

Economic Matters

**Commissioner of Financial Regulation and State Collection Agency Licensing
Board - Surety Bond Requirements for Licensees and Registrants**

This bill standardizes surety bond requirements (except for amounts) for specified financial services entities required to be licensed or registered with the Office of the Commissioner of Financial Regulation (OFR) within the Department of Labor, Licensing, and Regulation (DLLR). Specifically, the bill standardizes surety bond requirements for (1) collection agencies; (2) consumer lenders; (3) mortgage lenders; (4) money transmitters; (5) debt management companies; and (6) debt settlement companies. Under the bill, surety bonds for licensees and registrants remain in effect until canceled.

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations. However, OFR may realize administrative efficiencies as a result of processing surety bond paperwork less frequently.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Applicants must file a surety bond with OFR. (Collection agencies file surety bonds with the State Collection Agency Licensing Board (SCALB).) The bond must run to the commissioner (or SCALB) as obligee for the benefit of the State and any person

who has been damaged or injured by a violation of the applicable sections of law related to the licensee. The bond must be issued by a surety company that (1) is authorized to do business in the State and (2) holds a certificate of authority issued by the Maryland Insurance Commissioner.

The liability of the surety must meet certain requirements. Specifically, the surety:

- must be continuous;
- may not be aggregated or cumulative, whether or not the bond is renewed, continued, replaced, or modified;
- may not be determined by adding together the penal sum of the bond (or any part of the penal sum of the bond) in existence at any two or more points in time;
- must be considered to be one continuous obligation, regardless of increases or decreases in the penal sum of the bond;
- may not be affected by specified factors, including (1) the insolvency or bankruptcy of the licensee; (2) any misrepresentation, breach of warranty, failure to pay a premium, or any other act or omission of the licensee or an agent of the licensee; or (3) the suspension of the licensee's license;
- may not require an administrative enforcement action by the commissioner as a prerequisite to liability; and
- must continue for three years after the later of the date on which (1) the bond is canceled or (2) the licensee, for any reason, ceases to be licensed.

A surety bond may be canceled by the surety or the licensee by giving written notice of cancellation to the commissioner. However, the notice must be sent by certified mail, return receipt requested. A cancellation is not effective until 90 days after receipt of the cancellation notice by the commissioner.

A claim against the bond may be filed with the surety by (1) a claimant or (2) the commissioner for the benefit of a claimant or the State. If the amount of claims against a bond exceeds the amount of the bond, the surety (1) must pay the amount of the bond to the commissioner for *pro rata* distribution to claimants and (2) is relieved of liability under the bond.

If the penal amount of a bond is reduced by payment of a claim or judgment, the licensee or registrant must file a new or additional bond with the commissioner. A penalty imposed against a licensee or registrant may be collected and paid from the proceeds of a required bond.

The bill does not affect the amount of the surety bond required.

Current Law: Collection agencies, consumer lenders, mortgage lenders, money transmitters, debt management companies, and debt settlement companies are all required to file surety bonds with OFR. (Collection agencies file the surety bond with SCALB.) The bonds are effective for the duration of the license period – generally, for two years, although mortgage lenders and money transmitters must renew the bonds each year along with their licenses. **Exhibit 1** shows the amount of surety bonds required under current law; as noted above, the bill modifies the frequency with which all surety bonds must be filed, from either annually or biennially (coinciding with the term of licensure/registration) to once (at initial application or, if necessary to meet the bill’s requirements, the next renewal only), and maintained in continuous effect until 90 days after receipt of notice of cancellation.

Exhibit 1
Surety Bond Requirements for Specified Licensees and Registrants
Under Current Law and the Bill

<u>Type of Entity</u>	<u>Amount of Bond</u>	<u>Filing Frequency</u>	<u>Filing under the Bill</u>
Collection Agency	\$5,000	Biennial	
Consumer Lender	2 times amount of largest loan allowed under applicable State law	Biennial	For all: Filed on initial application (and in continuous effect until 90 days after receipt of notice of cancellation)
Mortgage Lender	\$50,000 to \$750,000	Annual	
Money Transmitter	\$150,000 to \$1 million	Annual	
Debt Management Company	\$10,000 to \$1 million	Biennial	
Debt Settlement Company	\$50,000	Biennial*	

*State law requires debt settlement companies to file a surety bond upon the establishment of the dedicated account required to charge fees as a debt settlement company, as specified in § 12-1014 of the Financial Institutions Article. However, the Commissioner of Financial Regulation advises that, as a matter of practice, debt settlement companies file bonds every two years, along with their registration renewals.

Source: Office of the Commissioner of Financial Regulation; Department of Legislative Services

Background: A surety bond is an agreement between an obligee, a principal, and a surety. The surety guarantees that the principal can fulfill any obligations to the obligee – thus protecting the obligee from any default by a principal on his or her duties.

OFR (under DLLR) supervises the activities of the financial services industry in Maryland through periodic on-site examinations and off-site monitoring programs. The mission of OFR is to ensure that the citizens of Maryland are able to conduct their financial transactions through safe, sound, and well-managed institutions that comply with Maryland law, while providing a flexible, yet sound, regulatory environment that promotes fair competition, encourages innovative business development, and supports the economy of Maryland.

OFR is responsible for chartering and supervising Maryland trust companies, State-chartered banks, and State-chartered credit unions; licensing and supervising State-licensed financial entities, including mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, affiliated insurance producer-originators, check cashers, money transmitters, consumer debt collection agencies, consumer lenders, installment lenders, sales finance businesses, credit services businesses, and debt management companies; and registering and supervising credit reporting agencies and debt settlement companies, to ensure compliance with the laws and regulations of Maryland.

OFR advises that, in fiscal 2016, it approved over 7,000 license renewals or new license issuances, all of which required a surety bond.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Insurance Administration; Department of Legislative Services

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