



House of Representatives

General Assembly

File No. 218

January Session, 2009

Substitute House Bill No. 6327

House of Representatives, March 25, 2009

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SURETY BONDS FOR DEBT ADJUSTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-664 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) (1) Except as provided in subdivision (2) of this subsection, no
4 such license, and no renewal thereof, shall be granted unless the
5 applicant has filed a surety bond with the commissioner written by a
6 surety authorized to write such bonds in this state, provided any
7 applicant that files applications for licenses for more than one location
8 shall file a single bond. [For] Except as provided in this subdivision,
9 for every applicant, the principal amount of the bond shall be the
10 greater of (A) forty thousand dollars, or (B) (i) twice the amount of the
11 [highest total] average daily balance of the payments received by the
12 applicant from Connecticut debtors in connection with the applicant's
13 debt adjustment activity [in any month] during the preceding twelve
14 months ending July thirty-first of each year or (ii), in the case of an
15 applicant that has acquired the business of a predecessor debt adjuster,

16 the lesser of the amount of the predecessor's debt adjustment activity
17 during such preceding period or one million dollars. The
18 commissioner may require a larger bond if the commissioner
19 determines that a licensee has engaged in a pattern of conduct
20 resulting in bona fide consumer complaints of misconduct and that
21 such increased bond is necessary for the protection of consumers, or
22 may increase or decrease the amount of the bond based upon the
23 applicant's or licensee's financial condition, business plan and the
24 actual or estimated aggregate amount of payments and fees paid by
25 Connecticut debtors to such applicant. Each licensee shall submit to
26 the commissioner, [evidence that the bond complies with the
27 provisions of this subdivision] by September first of each year, a report
28 containing information on the average daily balance of the payments
29 received by the licensee from Connecticut debtors during the
30 preceding twelve months ending July thirty-first of each such year.
31 The report shall be subscribed and affirmed as true by the licensee and
32 shall be in a form prescribed by the commissioner.

33 (2) If a licensee or applicant for renewal of a license establishes that
34 such licensee or applicant is unable to comply with the bond required
35 by subdivision (1) of this subsection, it [may submit to the
36 commissioner, by July first, a request for an alternative to such
37 requirement. If the commissioner finds that the financial responsibility,
38 character, reputation, integrity and general fitness of the applicant so
39 warrant, the commissioner may permit the applicant or licensee to
40 supplement the maximum surety bond that] shall file a bond for the
41 highest principal amount it can obtain, provided [the principal amount
42 of the surety bond] such amount shall be a minimum of forty thousand
43 dollars, [with such other bonds or insurance policies, in such amounts,
44 for such period and subject to such conditions as the commissioner
45 may approve. Any such bond or insurance policy shall be written or
46 issued by a surety or insurance company authorized to write such
47 bonds or sell such insurance in this state] and the licensee or applicant
48 for renewal shall, in lieu of the balance of the required amount of the
49 bond, deposit a sum equal to the amount of the bond required by
50 subdivision (1) of this subsection, less the amount of the bond filed

51 with the commissioner, in cash or cash equivalents, with such bank,
52 out-of-state bank that has a branch in this state, Connecticut credit
53 union or federal credit union as such applicant or licensee may
54 designate and the commissioner may approve, and subject to such
55 conditions as the commissioner deems necessary for the protection of
56 consumers and in the public interest. No licensee or applicant shall
57 make such deposit until the depository institution and the licensee or
58 applicant executes a deposit agreement satisfactory to the
59 commissioner. The deposit agreement shall pledge the amount
60 deposited to the commissioner and provide that the depository
61 institution shall not release any of the moneys pledged without the
62 authorization of the commissioner. The amount deposited shall secure
63 the same obligation as would a surety bond filed under this section
64 and shall be held at such banks or credit unions to cover claims during
65 the period the license remains in full force and effect and the
66 succeeding two years after such license has been surrendered, revoked
67 or suspended or has expired. The licensee or applicant may collect
68 interest on such deposit in accordance with its deposit agreement. The
69 deposits made pursuant to this section shall be deemed, by operation
70 of law, to be held in trust for the benefit of any debtor, who may be
71 damaged by failure of a licensee or applicant to perform any written
72 agreements or by the wrongful conversion of funds paid to a licensee
73 in the event of the bankruptcy of the licensee, and shall be immune
74 from attachment by creditors or judgment creditors.

75 (3) The form of any surety bond submitted pursuant to this section
76 shall be approved by the Attorney General. Any surety bond filed
77 under this section shall be conditioned upon the licensee faithfully
78 performing any and all written agreements with debtors, truly and
79 faithfully accounting for all funds received by the licensee in the
80 licensee's capacity as a debt adjuster, and conducting such business
81 consistent with the provisions of sections 36a-655 to 36a-665, inclusive.
82 Any debtor who may be damaged by failure to perform any written
83 agreements, or by the wrongful conversion of funds paid to a licensee,
84 may proceed on any such surety bond against the principal or surety
85 thereon, or both, to recover damages. The commissioner may proceed

86 on any such surety bond against the principal or surety thereon, or
 87 both, to collect any civil penalty imposed upon the licensee pursuant to
 88 subsection (a) of section 36a-50. The proceeds of any bond, [or
 89 insurance policy,] even if commingled with other assets of the licensee,
 90 shall be deemed by operation of law to be held in trust for the benefit
 91 of such claimants against the licensee in the event of bankruptcy of the
 92 licensee and shall be immune from attachment by creditors and
 93 judgment creditors. Any bond [or insurance policy] required by this
 94 section shall be maintained during the entire period of the license
 95 granted to the applicant, and the aggregate liability under any such
 96 bond [or insurance policy] shall not exceed the principal amount of the
 97 bond or the limit of liability. [of the insurance policy.]

98 (b) The surety [or insurance company] shall have the right to cancel
 99 any bond [or insurance policy written or issued] filed under subsection
 100 (a) of this section at any time by a written notice to the licensee, stating
 101 the date cancellation shall take effect. Such notice shall be sent by
 102 certified mail to the licensee at least thirty days prior to the date of
 103 cancellation. No such bond shall be cancelled unless the surety [or
 104 insurance company] notifies the commissioner in writing not less than
 105 thirty days prior to the effective date of cancellation. The commissioner
 106 shall automatically suspend the license on the date the cancellation
 107 takes effect, unless the bond [or insurance policy] has been replaced or
 108 renewed. The commissioner shall give the licensee notice of the
 109 automatic suspension pending proceedings for revocation or refusal to
 110 renew and an opportunity for a hearing on such actions in accordance
 111 with section 36a-51.

112 (c) No licensee shall use, attempt to use or make reference to, either
 113 directly or indirectly, any word or phrase which states or implies that
 114 the licensee is endorsed, sponsored, recommended [,] or bonded [or
 115 insured] by the state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	36a-664

Statement of Legislative Commissioners:

In subsection (b) of section 1, in the third sentence, the bracket was moved to include the word "company" for internal consistency.

BA *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 6327*****AN ACT CONCERNING SURETY BONDS FOR DEBT ADJUSTERS.*****SUMMARY:**

This bill changes the method for calculating the required surety bond that debt adjusters must file. It also sets the bond for a debt adjuster applicant who acquires a predecessor's debt adjuster business. The bill (1) allows the banking commissioner to change the bond amount based on certain conditions and (2) requires applicants who cannot meet the bond requirements to deposit a certain amount in a bank, instead of obtaining an insurance policy as is the option under current law. It also makes conforming changes.

EFFECTIVE DATE: July 1, 2009

CALCULATING THE REQUIRED BOND

Current law sets the bond amount for debt adjuster license applicants at the greater of (1) \$40,000 or (2) twice the amount of the highest total payments received from Connecticut debtors in connection with the applicant's debt adjustment activity in any month during the preceding 12 months ending on July 31 of each year. The bill requires the average daily balance over the preceding 12 months to be used instead of the highest total in any month. It limits the bond for applicants that have acquired the business of a predecessor debt adjuster to the lesser of the predecessor's debt adjustment activity during such 12-month period or \$1 million.

The bill allows the banking commissioner to require a larger bond if he determines that (1) a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct and (2) the increased bond is necessary for consumer protection. The bill also allows the commissioner to change the bond amount based on the

applicant's or licensee's financial condition, business plan, or the amount of payments and fees Connecticut debtors paid to the applicant.

Current law requires licensees to submit evidence that the bond complies with the statutory requirements by September 1 of each year. Instead, the bill requires licensees to submit, by September 1, annually, a report specifically containing information on the average daily balance of payments received from Connecticut debtors during the preceding 12 months ending on July 31. The licensee must subscribe and affirm it as true in a form the commissioner prescribes.

LICENSEES AND APPLICANTS UNABLE TO MEET THE BOND REQUIREMENTS

Under current law, when a licensee or renewal applicant cannot comply with the bond requirements, the person can submit a request for an alternative to the commissioner by July 1. If the commissioner determines it is warranted, he can allow the applicant or licensee to supplement the maximum bond, as long as it is at least \$40,000, with other bonds and insurance policies, with the details approved by the commissioner. The bill instead requires a licensee or applicant in this situation to file the highest bond it can get, as long as it is at least \$40,000. In lieu of the balance, the licensee or applicant must deposit an amount equal to what it was required to pay, minus the \$40,000 or more in cash or cash equivalents with a commissioner-approved Connecticut bank, out-of-state bank with a Connecticut branch, or Connecticut or federal credit union. The commissioner may impose other conditions he deems necessary for consumer protection and the public interest.

The bill prohibits such deposits from being made until the institution and licensee execute a depository agreement that the commissioner finds satisfactory. The agreement must pledge the deposited funds to the commissioner and prohibit the institution from releasing any of the pledged funds without the commissioner's authorization. The bill specifies that the deposited amount secures the

same obligations as would the surety bond and that it is to be held at the institution to cover claims during the license period and for two years after the license is surrendered, revoked, suspended, or expired. The applicant or licensee may, however, collect interest on the deposit in accordance with the agreement.

The bill deems the deposits, by operation of law, to be held in trust for the benefit of a debtor damaged by (1) the applicant's or licensee's failure to perform a written agreement or (2) the wrongful conversion of funds paid to a licensee in the event of the licensee's bankruptcy. The funds are immune from attachment by creditors or judgment creditors.

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 16 Nay 0 (03/10/2009)