



6354

**Testimony of The Surety & Fidelity  
Association of America on Raised Bill No. 6354**

**Before the Insurance and Real Estate Committee**

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**Presented by:**

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The Surety & Fidelity Association of America (SFAA) is a national trade association of companies licensed to write fidelity and surety bonds in the United States. SFAA's 454 members are sureties on the vast majority of bonds in the United States and Connecticut, and include a number of companies active in providing surety bail bonds. We appreciate the opportunity to submit comments on H.B. 6354, An Act Regulating Surety Bail Bond Agents.

SFAA's Bail Bond Advisory Committee met on February 16 and discussed H.B. 6354 and the impact it would have if enacted. Our member companies active in writing bail bonds are in favor of reform in the Connecticut bail bond business and particularly increased regulation of surety bail agents. Many of the provisions in the bill would be significant improvements, and we support them. Other provisions, however, would not accomplish the goals of the bill and would have very significant adverse consequences. We believe that these provisions need to be changed if the reform intended by the bill is to be successful.

Paragraph (f)(2) of Section One of the bill would add a new provision that the insurer certifies any appointed agent is "competent, financially responsible, and suitable to serve as a representative of the insurer" and makes the insurer "liable under this section for the acts of such person appointed within the scope of such person's actual or apparent authority, whether such person is acting on such person's own behalf or benefit or acting for the insurer." Bail agents are independent contractors. The surety company is not a liability insurer for the bail bond agents. The surety's role in the bail transaction is to assure payment if the bond is forfeited. The surety has extended credit and will make good any default. Making the surety statutorily liable for the torts or breaches of the bail agent is like making a bank liable for the misbehavior of its borrowers. If the last sentence of paragraph (f)(2) is not deleted, it will be very difficult for insurers to take the risk of issuing bail bonds in Connecticut. A tort or other exposure for the acts of an independent contractor when acting on the independent contractor's own behalf or benefit is not a reasonable business risk. We urge that paragraph (f)(2) of Section One be deleted from the bill.

Sections 3, 4 and 5 of the bill are designed to prevent discounting of premiums. We agree that premium discounting has led to multiple abuses and should be prevented. There is a difference, however, between premium discounting and premium financing. The bill does not appear to ban premium financing but could nevertheless severely restrict its availability. Bail is not only for the wealthy or for those with ready access to cash. If a defendant, or his or her friends and relatives, can assure future payment of the bond premium and any forfeiture, that defendant should be a good candidate for release on bail. An effective prohibition on premium financing, in which the full premium at the filed rate is paid albeit over time, will disproportionately impact poor defendants.

We believe that Section 4 of the bill can be revised to address the premium discounting problem more effectively and reduce unintended consequences. Unlike other types of surety bonds, the agent for bail bonds retains the risk of the principal's default and accordingly also retains a much larger share of the premium. Requiring the bail

agent to remit 100% of the premium to the surety only to have the surety return the majority of those funds to the agent will cause needless expense to the agent and surety, and also will not be effective in preventing premium discounting. Agents who violate the law and discount premiums will simply have to front the initial payment to the surety for a few days until the bulk of the funds are returned. This will not prevent discounting but will make legitimate premium financing more expensive.

Instead, we propose that Section 4(a) and (b) be deleted and replaced by the following:

(a) It shall be a criminal offense if a surety bail bond agent knowingly fails to charge the premium rate filed with and approved by the Commissioner pursuant to Chapter 701 of the General Statutes. In addition to any criminal liability, the Commissioner shall establish by regulation sanctions for failure to charge the required premium.

(b) If a surety bail bond agent determines to extend credit for payment of the premium, the surety bail bond agent must have the defendant and any indemnitor execute a bona fide promissory note for the balance of the premium due. The promissory note shall provide that the amount owed must be paid in not later than 360 days. In the event that the premium has not been paid in full to the surety bail agent by the due date, the surety bail agent must institute suit, by a verified complaint, on the promissory note within 60 days after the due date. The surety bail agent must diligently attempt to obtain judgment on that promissory note within 120 days after filing suit unless there is good cause for failure to obtain such a judgment. Good cause includes, but is not limited to, the filing of bankruptcy by a maker on the promissory note, or a failure to obtain service of process after good faith, diligent efforts.

(c) At least twice a year, for the periods covering January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>, each insurer shall audit each of its appointed surety bail bond agents to assure that its surety bail bond agents are charging the premium rate filed with and approved by the Commissioner pursuant to Chapter 701 of the General Statutes. On or before August 15<sup>th</sup> for the January 1<sup>st</sup> through June 30<sup>th</sup> period described above, and February 15<sup>th</sup> for the July 1<sup>st</sup> through December 31<sup>st</sup> period described above, each insurer shall notify the Commissioner of the failure of any surety bail bond agent to charge the filed and approved premium rate. Such notice shall include the name of the surety bail bond agent, the case docket number if assigned, the total amount of the surety bond, the date the surety bond was posted, the five-digit identification code assigned to such insurer by the National Association of Insurance Commissioners and the date the premium computed at the filed rate was due.

A great deal of the information included in the reports required by Section 13 of the bill will be within the direct knowledge of either the bail agent or the surety insurer. We agree that the Department should receive the information it needs to verify that the laws and regulations have been followed, and any discrepancy between the agent's and the surety company's reports should be investigated. On the other hand, swamping the Department with reports of the numbers and amounts of bonds may not be useful in identifying violations. Instead, we propose that representatives of the courts, the Department, sureties and surety bail bond agents meet and determine what information can be reported without unreasonable expense and in what form so that the legislation can require reports that enable the Department to perform effective oversight.

One of the difficulties with the bill is that the surety or agent will be required to make representations or report information that it does not have or has based only on communications from someone else. It should be clear that the party making the representation or reporting has the obligation to submit complete and accurate information to the best of its knowledge and belief, but that it is not responsible for someone else's false statements. Similarly, if the surety's certification that an appointed agent is "competent, financially responsible and suitable to represent the surety" in Section One, paragraph (f)(2) is not deleted, it should be made to the best of the surety's knowledge and belief.

SFAA and our members active in providing bail bonds support the Insurance Department's desire for meaningful reform. We believe, however, that reform can be implemented without unnecessary increased costs and unintended consequences by using, to the greatest extent possible, information already collected and available. We would be glad to work with the Committee and the Insurance Department as you craft the most effective bill possible.

