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## **OLR Bill Analysis**

### **sSB 28**

#### ***AN ACT CONCERNING SURETY BAIL BOND AGENTS AND PROFESSIONAL BONDSMEN.***

##### **SUMMARY:**

This bill makes changes to, and adds new, requirements for surety bail bond agents and professional bail bondsmen. (A surety bail bond agent, through a contract with an insurer, sells bail bonds in criminal cases and is regulated by the insurance commissioner. A professional bondsman puts up personal assets as bond security and is regulated by the public safety commissioner.)

The bill expands surety bail bond licensing and appointment requirements. It establishes (1) bail bond solicitation, record retention, and reporting standards and (2) premium financing, build-up funds, and collateral security requirements and restrictions. It requires agents to certify under oath to the insurance commissioner that they charged the bond premium rates the commissioner approved (i.e., did not discount or increase them).

It authorizes the insurance commissioner to (1) suspend or revoke a bail bond agent's license, impose a penalty of up to \$5,000, or both for violating the bill and (2) adopt implementing regulations.

The bill also (1) restricts bail bond solicitation by professional bondsmen in the same way as for surety bail bond agents, (2) establishes collateral security requirements for them, and (3) allows the public safety commissioner to examine professional bondsmen records and adopt implementing regulations.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2011

**§§ 1 & 15 — SURETY BAIL BOND AGENT LICENSING, APPOINTMENTS, AND EXAMINATION OF BOOKS**

By law, it is illegal to act as a surety bail bond agent unless licensed by the insurance commissioner and appointed by an insurer. To obtain a license, a person must file a completed application, pay an application fee, pass a written examination, and submit to a criminal history records check. By law, anyone acting as an agent without a license is guilty of a class D felony, punishable by one to five years in prison, a fine of up to \$5,000, or both.

The bill prohibits a person engaged in law enforcement or vested with police powers from being licensed as a surety bail bond agent.

***Disqualifying Offense***

The bill expands the list of convictions that disqualify a person from being licensed as an agent to include convictions for any misdemeanor involving dishonesty or misappropriation of money or property. The law already disqualifies people convicted of a felony or any of the following misdemeanors:

1. illegal drug possession;
2. criminally negligent homicide;
3. 3<sup>rd</sup>- degree assault;
4. 3<sup>rd</sup>-degree assault of an elderly, blind, disabled, pregnant, or mentally retarded person;
5. 2<sup>nd</sup>-degree threatening;
6. 1<sup>st</sup>-degree reckless endangerment;
7. 2<sup>nd</sup>-degree unlawful restraint;
8. 2<sup>nd</sup>-degree failure to appear;
9. 1<sup>st</sup>- or 2<sup>nd</sup>-degree rioting or inciting others to riot; or
10. 2<sup>nd</sup>-degree stalking.

The bill requires an insurer, managing general agent, or agent to notify the commissioner in writing within five days of learning that an agent was arrested for, pleaded guilty or no contest to, or was found guilty of a disqualifying offense in Connecticut or a similar offense in another state, whether a court entered or withheld judgment.

The bill defines “managing general agent” as a person an insurer appoints or employs to supervise the bail bond business that the insurer’s appointed surety bail bond agents write in Connecticut.

### ***Appointments***

By law, an agent must have an insurer’s notice of appointment on file with the commissioner to act on the insurer’s behalf.

The bill specifies that, by appointing an agent, an insurer is (1) certifying that, to the best of its knowledge and belief, the person is competent, financially responsible, and suitable to serve as the insurer’s representative and (2) bound by the person’s acts within the scope of his or her actual or apparent authority as the agent. The bill prohibits agents from representing that they have authority to act on an insurer’s behalf until the insurer has appointed them.

By law, an appointment continues in force until the agent’s license terminates or the insurer, its representative, or the agent files a termination notice. The bill specifies that the appointment notice is filed with the commissioner.

The bill prohibits agents from acting, or attempting to act, on the insurer’s behalf after their appointment is terminated. However, it permits an insurer that terminates an agent’s appointment to authorize the agent to (1) take into custody a person who has absconded for whom a bail bond was written before the appointment was terminated and (2) try to have forfeitures and judgments discharged.

### ***Examination of Books and Records; Examination Fee and Account***

The bill permits the insurance commissioner to examine a surety bail bond agent’s books and records as often he deems necessary to

enforce the bill. He already has this power with respect to license eligibility.

The bill requires agents to pay the commissioner a \$450 fee by January 31 each year to cover the costs of these examinations. The commissioner must deposit the fees in a surety bail bond agent examination account, which the bill creates as a separate, non-lapsing account in the Insurance Fund. The account must contain any money required to be deposited in it. The commissioner must use the money in the account for examinations. Any money remaining in the account at the end of each fiscal year must be transferred to the General Fund.

***Notification of Bankruptcy or Change in Address or Telephone Number***

The bill requires an agent to give written notice to the commissioner within 30 days of (1) changing his or her name or residence address or (2) any bankruptcy proceeding by the agent or any administrative action or order against the agent in this or another state. (The notice must also include all supporting documentation.) The bill requires an agent to give written notice within 30 days of changing his or her business name, principal business address, or telephone number to the commissioner, appointing insurer, and managing general agent.

***License Fees***

The bill sets the surety bail bond agent licensing fees at (1) \$150 for filing an initial license application and (2) \$100 for issuing or renewing a license. Under current law, the commissioner sets these fees. The bill requires license applicants to pay the fees before the commissioner issues the license. It specifies that a license expires on January 31 in even-numbered years.

**§ 2 — NOTICE TO COURTS AND POLICE DEPARTMENTS**

By law, the insurance commissioner must give all courts and police departments in Connecticut a list of licensed surety bail bond agents and notify them of any change in the agent's status. The bill requires him to also (1) provide the agent's principal business address and telephone number and (2) notify them of a change in the agent's

business name, principal business address, or telephone number.

### **§ 3 — PREMIUM REQUIREMENTS**

The bill prohibits agents from executing a bail bond unless they charge the premium rate the insurance commissioner approved. It specifies that it does not prohibit or limit a premium financing arrangement that complies with its provisions (see § 4).

#### ***Premium Certifications***

***Monthly.*** The bill requires agents, by the 10<sup>th</sup> of each month, to certify under oath to the commissioner, on a form he prescribes, that the premium for each surety bail bond executed during the prior month did not differ from the approved premium rate.

If an agent files a false certification, the commissioner may, after notice and hearing, suspend or revoke the agent's license, impose a penalty of up to \$5,000, or both.

***Annual.*** By January 31 each year, the bill requires insurers to file a statement with the commissioner certifying the total amount of bail bonds executed and the total amount of premiums collected in the preceding calendar year.

#### ***Audit Requirement***

The bill requires insurers transacting surety bail bond business in Connecticut to audit their appointed agents twice per year to ensure each is charging the approved premium rate. The audits must cover (1) January 1 to June 30 and (2) July 1 to December 31.

Within 45 days after each audit period ends, insurers must notify the commissioner of any agent who failed to charge the approved premium rate. The notice must include the:

1. agent's name;
2. case docket number, if assigned;
3. total bond amount;

4. date the bond was executed,
5. insurer's National Association of Insurance Commissioners identification code; and
6. date the premium was due.

#### **§ 4 — PREMIUM FINANCING ARRANGEMENTS**

The bill allows surety bail bond agents to enter into premium financing arrangements with a principal or indemnitor where the agents extend credit. If they enter into such arrangements, they must require the principal on the bond or any indemnitor to (1) make a minimum down payment of 35% of the approved premium rate and (2) execute a promissory note for the remaining premium due. The promissory note must require payment in full within 15 months of its execution.

If the balance owed is not paid in full by its due date or a payment is more than 60 days past due, the bill requires the agent to (1) file a civil court action seeking appropriate relief within 75 days of when the balance was due and (2) make a diligent effort to obtain judgment, unless good cause is shown for failing to do so (e.g., the principal or indemnitor files for bankruptcy or service of process failed despite good faith efforts).

#### **§ 5 — RECORD KEEPING AND ACCOUNTING FOR FUNDS**

The bill deems premiums, return premiums, or other funds an agent receives that belong to insurers or others to be trust funds received in a fiduciary capacity. The agent must account for and pay the funds to the insurer or person entitled to them according to the agent's contract with the insurer or managing general agent. The bill prohibits any fees, expenses, or charges of any kind from being deducted from the return premiums, unless otherwise allowed under the bill. ("Return premium" is any part of a premium that a surety bail bond agent is obligated to return to a principal or indemnitor.)

The bill requires an agent to keep, and make available to the commissioner or his designee, books, accounts, and records as

necessary to enable the commissioner to determine whether the agent is complying with the bill. An agent must keep books, accounts, and records relating to premium payments for at least three years after payments are made. The bill permits photographic and digital reproductions of records.

An agent who unlawfully diverts or appropriates trust funds for his or her own use is guilty of larceny. (Larceny ranges from a Class C misdemeanor to a Class B felony, depending on the amount involved.)

### **§ 6 — RECORD MAINTENANCE AND EXAMINATION**

The bill requires an agent to maintain all records of bonds they executed or countersigned for at least three years after the insurer's liability ends. The records must be open at all times for the Insurance Department's, insurer's, or managing general agent's examination, inspection, and copying. The commissioner may require agents to provide the department information concerning their surety bail bond business at any time and in a way he specifies.

### **§ 7 — BUILD-UP FUNDS**

The bill requires a surety bail bond agent or managing general agent to post "build-up funds" with an insurer or managing general agent according to (1) his or her contract with the insurer or managing general agent or (2) the managing general agent's contract with the insurer, whichever is applicable. The bill defines "build-up funds" as a percentage of the premium the agent receives to execute a bail bond that is held in a trust account by the insurer or managing general agent.

The insurer or managing general agent must establish an individual build-up trust account for the agent in a federally insured bank or savings and loan association located in Connecticut. It must be in (1) the name of the agent and the insurer or managing general agent or (2) a trust for the agent. The account must be open to the Insurance Department's inspection and examination at all times. The insurer or managing general agent must maintain an accounting of all build-up funds that designates the amounts collected on each bond executed.

Under the bill, build-up funds must be used to compensate the insurer or managing general agent for any losses incurred in apprehending a defendant or paying forfeited bail bonds. The bill prohibits build-up funds from exceeding 40% of the surety bail bond premium the insurer contractually authorizes the agent to write. Build-up funds received must be immediately deposited to the build-up trust account, and interest earned on the deposits must accrue to the surety bail bond agent.

The bill specifies that build-up funds become due to the agent when the (1) agent's bail bond contract ends and (2) liabilities on the bail bonds for which the funds were posted are discharged. It requires an insurer or managing general agent to pay the funds, minus any expenses incurred, to the agent within six months after they are due.

## **§§ 8 & 9 — COLLATERAL SECURITY OR INDEMNITY**

### ***Requirements and Restrictions***

The bill allows a surety bail bond agent to accept collateral security or other indemnity on a bail bond and specifies related requirements and restrictions. The collateral or indemnity must (1) be reasonable in relation to the bond amount, (2) not be used for the agent's personal benefit or gain, and (3) be returned in the same condition as received.

Acceptable forms of collateral or other indemnity include (1) cash or its equivalent, (2) a promissory note, (3) an indemnity agreement, (4) a real property mortgage in the insurer's name, or (5) any Uniform Commercial Code filing. If the agent receives collateral or other indemnity exceeding \$50,000 in cash, he or she must make the cash amount payable to the insurer using a cashier's check, U.S. postal money order, certificate of deposit, or wire transfer. But the bill also specifies that when an agent receives bond collateral exceeding \$50,000 in cash or its equivalent, he or she must promptly forward the entire amount to the insurer or managing general agent.

The agent must provide the person putting up the collateral or indemnity a written, numbered receipt that includes a detailed description of the collateral or indemnity provided, along with copies

of any documents rendered. The agent must hold the collateral or indemnity in a fiduciary capacity. Before any bond forfeiture, the agent must keep the collateral or indemnity separate and apart from any other funds or assets.

The bill allows the agent to deposit collateral or other indemnity in an interest-bearing account in a federally insured bank or savings and loan association located in Connecticut. The interest accrues to the benefit of the person putting up the collateral or other indemnity. The bill prohibits the agent, insurer, or managing general agent from receiving any pecuniary gain on the deposited collateral or other indemnity.

The bill makes the insurer liable for all collateral or indemnity an agent receives. If, upon final termination of liability on a bond, the surety bail bond or managing general agent fails to return the collateral or other indemnity to the person that put it up, the bill requires the insurer to (1) return the actual collateral or indemnity to that person or (2) if it cannot be located, pay the person its value. The insurer's liability survives the termination of a surety bail bond agent's appointment with respect to bonds the agent wrote before the termination.

If a bail bond is forfeited, the agent or insurer must give the bond's principal and the person who put up collateral or other indemnity 30 days' written notice that it will be converted into cash to satisfy the forfeiture. The notice must be sent by certified mail, return receipt requested, to their last-known addresses. If the court orders a stay of execution on the forfeiture in accordance with law, the agent or insurer must send the written notice at least 30 days before the stay expires.

The bill requires the agent or insurer to convert the collateral or other indemnity into cash within a reasonable period of time and return to the principal or person who posted it any amount that exceeds the bail bond's face value, minus the actual and reasonable conversion expenses, which must not exceed 10% of the face value. If an agent spends more than 10%, he or she may file a civil court action

to recover the full amount of actual and reasonable expenses upon motion and proof that expenses exceeded 10%. If a bond is forfeited and the insurer paid the bond, the insurer must pay the person who put up the collateral or indemnity its value minus the actual and reasonable expenses that can be recovered.

Under the bill, an agent or insurer cannot enter into any agreement as to the collateral's or indemnity's value that does not reflect its actual value. Any agreement that violates the bill is void.

***Additional Appointment Requirement***

Before an insurer appoints surety bail bond agents who are currently or were previously appointed by another insurer, the agents must file a sworn and notarized affidavit with the commissioner, on a form he prescribes, stating that:

1. they have not lost, misappropriated, converted, or stolen any collateral or indemnity they hold in trust for an appointing insurer;
2. all collateral or indemnity they hold in trust and all records for any appointing insurer are available for the commissioner's, insurer's, or managing general agent's immediate audit and inspection; and
3. they will, upon the commissioner's or insurer's demand, transmit the records to the insurer for whom the collateral or indemnity is being held in trust.

***Returning Collateral or Indemnity***

Under the bill, if an agent accepted collateral or indemnity on a bond and the bond is terminated, the surety bail bond agent, managing general agent, or insurer must return it, except a promissory note or an indemnity agreement, within 21 days after (1) receiving a court's written report that the bond was terminated or (2) becoming aware that the bond was terminated even if, despite a managing agent's or insurer's diligent inquiry, the court does not issue a written report. The collateral or indemnity must be returned to the person who provided

it, unless the right to receive it was legally assigned to another person.

The bill prohibits an insurer or agent from deducting a fee or other charge, other than one the bill authorizes, from the collateral or indemnity due. Actual expenses incurred in apprehending a defendant because of a forfeiture of bond or judgment, if accounted for, may be deducted.

A person who violates the bill's provisions regarding returning collateral or indemnity is guilty of larceny.

### **§ 10 — GIVING BAIL BOND SUPPLIES TO UNLICENSED PERSON PROHIBITED**

The bill prohibits an insurer, managing general agent, or surety bail bond agent from giving any blank form, application, stationery, business card, or other supplies used in soliciting, negotiating, or executing bail bonds to a person not licensed and appointed as a surety bail bond agent. It specifies that this does not prohibit an unlicensed employee under the direct supervision and control of a licensed and appointed agent from possessing or working with any form used in the agent's or insurer's daily business activities, other than a power of attorney, bond appearance form, or collateral security or indemnity receipt.

#### ***Insurer Liable***

The bill makes an insurer that (1) gives supplies to an agent or other person the insurer has not appointed and (2) accepts bail bond business from or executes bail bond business for that person, liable on the bail bond to the same extent and in the same manner as if the insurer had appointed him or her to act on its behalf.

### **§ 11 — PROHIBITED PRACTICES**

The bill prohibits an agent or insurer from:

1. suggesting, advising, or giving the name of, a particular attorney to represent the principal (i.e., bail bond client) in exchange for a fee or other consideration;

2. directly or indirectly “soliciting” business (see below) (a) in, or on the grounds of a correctional institution, community correctional center, or other detention facility where arrested people are confined or (b) in a police station or courthouse;
3. wearing or displaying any identification, other than an Insurance Department-issued or insurance commissioner-approved license or identification, in or on the grounds of a correctional institution, community correctional center, other detention facility where arrested people are confined, or courthouse;
4. acting as an attorney at a principal’s proceeding in violation of law;
5. executing a bond in Connecticut (a) on the agent’s or insurer’s own behalf, (b) if a bond the agent executed is forfeited and the forfeiture has remained unpaid for at least 60 days after payment was due, unless the full amount of the forfeited bond is paid to the chief state’s attorney’s office, or (c) if the arrested person or someone authorized to act on the person’s behalf has not authorized the agent to do so (the agent must keep the written authorization); and
6. accepting anything of value from a principal for providing a bail bond, other than the approved premium and an expense fee, except that the agent may accept collateral or indemnity.

The bill permits an agent, upon written agreement with a third party, to receive a fee or other compensation for returning to custody a person who fled the court’s jurisdiction or caused a bond forfeiture.

The bill specifies that, for purposes of item 2 above, “solicit” includes distributing business cards, print advertising, or any other written information directed to arrested persons or potential indemnitors, unless an arrestee or indemnitor initiates contact. The bill limits permissible print advertising in, or on the grounds of a correctional institution, community correctional center, other detention

facility where arrested people are confined, police station, or court, to a (1) telephone directory listing and (2) posting of the surety bail bond agent's name, address, and telephone number in a prominent, designated location.

The bill also prohibits an agent or insurer from paying a fee or rebate or giving or promising anything of value to:

1. a law enforcement officer, judicial marshal, Department of Correction employee, other person who has power to arrest or hold a person in custody, or public official or employee to secure a bail bond compromise, remission, reduction, or estreatment (i.e., enforcement of a bond forfeiture);
2. an attorney in a bail bond matter, except in defense of a bond action; or
3. the principal or anyone on his or her behalf.

## **§ 12 — REPORTING REQUIREMENTS**

The bill requires each insurer and surety bail bond agent executing bail bonds in Connecticut to maintain and report certain information to the Insurance Department upon request. An agent must (1) report the information to the department separately for each insurer he or she represents and (2) give a copy to each such insurer.

An insurer and agent must report the number and total dollar amount of:

1. bail bonds executed;
2. bail bonds ordered forfeited;
3. forfeitures discharged, remitted, or otherwise recovered before payment for any reason, including the agent's apprehension of the principal;
4. forfeited bonds not reinstated under law;

5. forfeitures paid and subsequently recovered by the Chief State's Attorney's Office; and
6. bail bonds for which collateral or other indemnity was received.

They must also report:

1. a list of every outstanding or unpaid forfeiture, estreature, and judgment, including the case number and court for each, and the name of each agency or firm employing the surety bail bond agent;
2. the actual value of collateral security or other indemnity converted, excluding the cost of converting it;
3. the cost of converting collateral security or indemnity; and
4. additional information the Insurance Department may require to evaluate the (a) reasonableness of rates, ensuring that rates are not excessive, inadequate, or unfairly discriminatory, (b) financial condition or trade practices of agents and insurers executing bail bonds, and (c) performance of the surety bail bond agents and insurers executing bonds in accordance with appropriate criminal justice system goals and standards.

An insurer must also report:

1. commissions paid,
2. underwriting gain or loss, and
3. net investment gain or loss allocated to funds associated with Connecticut business.

### ***Annual Meeting***

The bill requires the commissioner to meet at least annually with a group of agents, insurers, and any other representatives he deems necessary to discuss these reporting requirements.

### **§ 13 — PENALTY AND APPEALS**

The bill extends to its provisions, the commissioner's existing authority to suspend or revoke an agent's license, impose a penalty of up to \$5,000, or both, for violating the law.

When an agent's license is surrendered, suspended, or revoked, the bill requires the appointing insurer or managing general agent to designate immediately a licensed and appointed agent to administer the bail bonds the former agent executed.

By law, a person whose license the commissioner suspended or revoked, or whom the commissioner fined, may appeal. The bill transfers the appeal venue from Hartford to the New Britain judicial district.

#### **§ 14 — REGULATIONS**

The bill authorizes the commissioner to adopt implementing regulations. Current law requires him to adopt regulations implementing licensing and appointment requirements.

#### **§§ 16-21 — PROFESSIONAL BAIL BONDSMEN**

##### ***Licensing and Notice to Courts and Others***

By law, a professional bail bondsman is someone who furnishes bail in five or more criminal cases a year, whether or not for compensation. A professional bondsman must be licensed by the Department of Public Safety (DPS), be a resident elector, and submit to a criminal history records check. A license applicant must provide DPS with personal information, including name, age, residence, and occupation. The bill requires an applicant to also provide his or her telephone number.

The bill requires a professional bondsman to give DPS written notice of a change in name, address, or telephone number within 30 days after the change.

By law, the DPS commissioner must give all courts and municipal departments authorized to accept bail a list of licensed professional bondsmen and notify them of any change in a bondsman's status. The bill requires him also to (1) provide the bondsman's address and

telephone number and (2) notify them of a change in the bondman's name, address, or telephone number.

By law, anyone who violates these provisions is subject to a fine of up to \$1,000, imprisonment of up to two years, or both and his or her license is permanently forfeited.

***Examination of Books***

The bill permits the DPS commissioner to (1) examine a professional bondsman's books and records as often as he deems necessary and (2) consult with the insurance commissioner to carry out such inspections. The bill also authorizes the DPS commissioner to adopt regulations to (1) establish inspection procedures, (2) determine the content and form of books and records bondsmen must keep, and (3) require bondsmen to pay a fee to cover the cost of the inspections.

***Regulations***

The bill authorizes the DPS commissioner to adopt regulations to implement its provisions relating to professional bondsmen.

***Prohibited Practices***

The bill restricts bail bond solicitation by professional bondsmen in the same way as for surety bail bond agents (see § 11 on prohibited practices above), with two differences.

A professional bondsman cannot:

1. wear or display any identification, other than a DPS commissioner-approved or -issued license or identification, in or on the grounds of a correctional institution, community correctional center, other detention facility where arrested people are confined, or courthouse and
2. accept anything of value from a principal for providing a bail bond, other than the commission or fee authorized by law and collateral or indemnity in accordance with the bill.

By law, a bondsman may charge up to \$50 for bond amounts up to

\$500, 10% for amounts of \$500 to \$5,000, and 7% for amounts over \$5,000.

***Collateral Security and Indemnity***

The bill allows a professional bondsman to accept collateral security or indemnity on a bail bond.

Under the bill, if a bondsman accepted collateral or indemnity on a bond and the bond is terminated, he or she must return the collateral or indemnity, except a promissory note or an indemnity agreement, within 21 days after (1) receiving a court's written report that a bond was terminated or (2) becoming aware that a bond was terminated even if, despite diligent inquiry, the court does not issue a written report. The collateral or indemnity must be returned to the person who provided it, unless the right to receive it was legally assigned to another person.

The bill prohibits a bondsman from deducting a fee or other charge from the collateral or indemnity due, but actual and reasonable expenses incurred in apprehending a defendant because of a forfeiture of a bail bond or judgment, if accounted for, may be deducted.

A bondsman who violates these requirements is guilty of larceny.

**§ 23 — VERIFICATION OF OUTSTANDING WARRANTS**

At the request of a licensed professional bondsman, surety bail bond agent, or bail enforcement agent during regular business hours, the bill requires the Judicial Branch to verify whether a rearrest warrant or capias issued by a court after forfeiting a bond for failure to appear is still outstanding.

**§ 24 — PRINCIPAL INCARCERATED IN ANOTHER JURISDICTION**

The bill requires the court to vacate an order forfeiting a bond and release the professional bondsman, surety bail bond agent, and insurer when the (1) principal is detained or incarcerated in another state, territory, or country; (2) professional bondsman, agent, or insurer provides the court and prosecutor with proof of detention or incarceration; and (3) prosecutor declines to seek extradition.

By law, when the court orders a bail bond forfeited and issues a rearrest warrant for failure to appear, the court stays execution of the bond forfeiture for six months.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (02/17/2011)