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## OLR Bill Analysis

### sHB 5824

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

#### **SUMMARY**

This bill requires both professional bail bondsmen and surety bail bond agents to create trustee accounts and establishes penalties for failure to do so. These bondsmen and agents must deposit all collateral security or other indemnity that they accept on bail bonds into these accounts.

A professional bondsman puts up personal assets as bond security and is regulated by the Department of Emergency Services and Public Protection (DESPP) commissioner. A surety bail bond agent, through a contract with an insurer, sells bail bonds in criminal cases and is regulated by the insurance commissioner. The bill requires the applicable commissioner to audit each bondsman or agent's account.

EFFECTIVE DATE: October 1, 2023

#### **TRUSTEE ACCOUNT**

##### ***Professional Bondsmen***

***Licensure.*** The bill requires each professional bondsman to establish and maintain a trustee account. The bondsman must deposit all collateral security or other indemnity that he or she accepts on a bail bond into the account. The DESPP commissioner must determine that professional bondsman license applicants have the account prior to issuing the license. The commissioner must also audit each trustee account at least annually.

***Penalties.*** Failure to establish and maintain a trustee account results in a fine of up to \$3,500, and violators permanently forfeit their right to engage in the business of a professional bondsman.

The bill also reduces the penalty for violating certain professional bail bondsman laws by limiting it to a fine of up to \$3,500 and eliminating the allowance for a prison sentence of up to two years or both. It also makes technical and conforming changes.

### ***Surety Bail Bond Agent***

***Licensure and Appointment.*** By law, a person may not act as a surety bail bond agent unless licensed by the insurance commissioner and appointed by an insurer. The bill adds a new requirement for both licensure and appointment.

Under current law, an applicant for a surety bail bond agent license must provide the insurance commissioner with evidence of age, citizenship, and a record free of disqualifying offenses. The bill adds the requirement that the applicant also provide evidence that he or she has established and maintains a trustee account. Additionally, the bill requires the commissioner or his or her designee to annually audit each surety bond agent's trustee account.

Relatedly, under current law an insurer's appointment of a person as a surety bail bond agent certifies that the insurer believes the agent is financially responsible. The bill requires surety bail bond agents to establish and maintain a trustee account as evidence of their financial responsibility.

***Trust Funds.*** Under current law, all premiums and funds belonging to insurers or others that the surety bail bond agent receives when performing his or her duties are considered trust funds received by the surety bail bond agent in a fiduciary capacity. The bill adds the funds held in the agent's trustee account to those considered trust funds under the law.

***Penalties.*** A surety bail bond agent's failure to establish and maintain a trustee account is subject to the penalties for larceny under existing law, depending on the amount involved (see BACKGROUND). These same penalties apply under existing law when an agent diverts or appropriates any trust funds for his or her own use.

Current law allows the commissioner to do the following for any violation of the bail bond insurance laws: suspend or revoke the surety bail bond agent's license, impose a fine up to \$5,000, or both. The bill caps the possible fine amount at \$3,500. However, the bill simultaneously requires the commissioner to suspend or revoke the agent's license, with the option to impose the fine of up to \$3,500. (It is unclear under which circumstances the commissioner is required to suspend or revoke the agent's license).

## **COLLATERAL SECURITY AND OTHER INDEMNITY**

### ***Professional Bondsman***

By law, a professional bondsman may accept collateral security or indemnity on a bail bond. If a bondsman accepted collateral or indemnity on a bond and the bond is terminated, he or she must return the collateral or indemnity, unless it is 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 specifies that acceptable forms of collateral security or other indemnity for a professional bondman include, but are not limited to, the following: (1) cash or its equivalent, (2) a promissory note, (3) an indemnity agreement, (4) a real property mortgage in the name of the insurer, or (5) any Uniform Commercial Code filing.

### ***Surety Bail Bond Agent***

Existing law requires surety bail bond agents to hold the collateral security or other indemnity in a fiduciary capacity. Prior to any forfeiture of a bail bond, current law requires the agent to keep the collateral security or other indemnity separate and apart from any other funds or assets the agent has. The bill specifies that they must be kept in a trustee account established and maintained by the agent.

## **BACKGROUND**

### ***Larceny Penalties***

The following penalties are set in law for larceny, depending on the amount involved:

1. if the amount exceeds \$20,000, it is a class B felony, punishable by one to 20 years in prison, a fine of up to \$15,000, or both;
2. if the amount exceeds \$10,000, it is a class C felony, punishable by one to 10 years in prison, a fine of up to \$10,000, or both;
3. if the amount exceeds \$2,000, it is a class D felony, punishable by up to five years in prison, a fine of up to \$5,000, or both;
4. if the amount exceeds \$1,000, it is a class A misdemeanor, punishable by up to 364 days in prison, a fine of up to \$2,000, or both;
5. if the amount exceeds \$500, it is a class B misdemeanor, punishable by up to six months in prison, a fine of up to \$1,000, or both; and
6. if the amount is \$500 or less, it is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 (03/27/2023)