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FISCAL IMPACT REPORT

SPONSOR HBIC DATE TYPED 3/15/05 HB 835/HBICS/aHJC

SHORT TITLE Bail Bondsman Licensure Requirements SB _____

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

House Bill 835 duplicates Senate Bill 877

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Corrections Department (CD)
 Public Regulations Commission (PRC)

SUMMARY

Synopsis of HJC Amendments to House Bill 835

The House Judiciary Committee Amendments to Substitute House Bill 835 would remove language which specified that to be licensed as a bail bondsmen a person could not be engaged in or have committed an act proscribed in Section 59A-51-13 or 59A-51-41 NMSA 1978. These sections of statute regulate bail bondsmen practice, and don't exist respectively.

The amendment also removes the portion of the provision restricting the relation of a bail bondsman to attorneys, law enforcement, judicial or prosecution official.

Synopsis of Substitute Bill

House Bill 835 amends portions of the Bail Bondsmen Licensing Law in regards to licensing qualifications, collateral requirements, and business practices for bail bondmen. The bill contains an emergency clause;

Specifically, the bill:

1. Prohibits a person with a felony conviction; or a law enforcement, judicial or prosecution official from becoming licensed as a bail bondsmen.
2. Restricts a person from being a bondsmen should they be a law enforcement, adjudication, jail, court or prosecution official or an employee of an attorney, or other official authorized to admit to bail, state or county officer.
3. Restricts additional surcharges bondsmen can add to their allowed fees; provides for the return of collateral within “a reasonable amount of time” of termination of the bond; prohibits retention or sale of collateral for failure to pay a bond premium; limits collateral interests in real property to the amount of the bond; prohibits pledging collateral directly to the court; and requires a receipt describing the collateral.
4. Requires bondsmen to conduct business only under the name on the license.
5. Allows the Superintendent of Insurance to terminate a license upon violations of these provisions, including the failure to preserve and return collateral.

Significant Issues

The proposed language stating “a reasonable amount of time” is not clearly defined.

It is not clear why the substitute bill includes an emergency clause.

The PRC has the following comments:

“The Insurance Division has received a number of inquiries about the qualifications of pending applicants, existing licensees and their criminal histories. The Division has serious concerns about the suitability of individual licensure to transact the bail bond business and their interaction with the judicial system, consumers and consumer families.

On June 29, 2004, the Superintendent asked staff to review applicable federal and state laws to determine whether stricter qualifications for bail bondsmen were necessary. Staff prepared the proposed legislation based in part upon recent changes to Colorado’s laws, when faced with similar issues.

At present, federal law only permits the Superintendent to deny a license if there is a federal conviction and the conviction specifically relates to the “transaction of insurance”. This terminology is ambiguous and is crafted more appropriately for insurance agents and brokers whose business differs from bail bondsmen. Beyond convictions related to the transaction of insurance, New Mexico’s Criminal Rehabilitation Statute governs other types of convictions pursuant to a three-year look back period.

Bail bond licensees play an adjunct role in our judicial system. They essentially agree to post bail or become the “jailor of choice” for an arrested individual to allow the arrestee to be released from jail on the assurance that they will appear in Court. Bail bondsmen may accept collateral security from the individual or the individual’s family, to ensure appearance in Court. If an accused flees, the bail bondsmen is liable to the Court for the full amount of the bond and has the obligation to recover the accused.

Recognizing this role and in the interests of these individual’s families and the judicial

system, bail bond licensees must be held to a certain level of qualifications and background beyond that of an insurance agent, broker or adjuster. They must be responsible in their dealing with jail personnel and the Courts in assuring that individuals honor appearances. Likewise, they must not take advantage of families bailing out loved ones by pledging certain collaterals such as homes, vehicles and other forms of personal property that must immediately be returned unconditionally upon termination of the liability of the bond via appearance in Court.”

PERFORMANCE IMPLICATIONS

The Bail Bondsmen Licensing Law is compiled as part of the Insurance Code and is administered by the Superintendent of Insurance.

FISCAL IMPLICATIONS

The Insurance Division of the PRC do not anticipate any significant fiscal impact.

The AOC reports any additional fiscal impact on the judiciary would be proportional to the enforcement of this new law.

There may be greater protection in place in restricting losses for New Mexico citizens who pledge homes, vehicles and other forms of personal property as collateral when providing bail.

ADMINISTRATIVE IMPLICATIONS

The PRC will be required to notify the insurance industry, licensing staff and third party vendors of the changes in law through briefings and trainings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The original bill duplicates SB 877

TECHNICAL ISSUES

The PDD notes HB 835 prevents attorneys from being licensed as bail bondsmen, and may violate constitutional rights to property as there may be no rational basis to prevent an attorney from operating a bail bonding business.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

There may not be legislation in place to adequately protect people who post bonds through sureties.

EM/lg:njw:yr