

STORAGE NAME: s0768z.fs
DATE: May 27, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 768 (1st Engrossed)
RELATING TO: Sureties (Rule Authorization Bill)
SPONSOR(S): Senator Diaz-Balart
COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

SB 768 passed the Senate 38-0 on March 19, 1998, and passed the House 115-0 on April 16, 1998. The bill became law without the Governor's signature on April 30, 1998: Chapter 98-39, Laws of Florida.

II. SUMMARY:

Bail bond agents are regulated by the Department of Insurance, because a bail bond is a surety contract (an insurance product). When a bail bond agent files a bail bond, the agent must file along with the bond an affidavit or statement specifying the amount and source of any collateral or consideration that has been promised or received in connection with the bond.

The Department of Insurance has identified three rules relating to collateral security agreements involving bail bond agents that exceed the department's rulemaking authority. The department adopted these rules many years ago, apparently in response to the statutory affidavit requirement. Rule 4-221.125, Florida Administrative Code (F.A.C.), requires that bail bond agents use an affidavit when they accept collateral security for a bail bond. The affidavit provides for the amount and source of security or consideration received by an agent or surety for posting a bond. Rule 4-221.130, F.A.C., requires that agents may utilize, in lieu of an affidavit, a statement. Rule 4-221.140, F.A.C., requires that indemnity agreements between the agent and principal (the arrestee) contain certain "hold harmless" language to protect the agent from any losses which may occur in writing the bail bond.

This bill would provide the statutory authority for these rules. The Department of Insurance would have statutory authority to adopt rules setting out the form of the statutorily-required affidavits and statements of the source and amount of the collateral or consideration for a bail bond. The effect of this provision would be to authorize current Rules 4-221.125 and 4-221.130, F.A.C.

The indemnity agreement between the principal (the person seeking the bail bond) and the surety (bail bond company) or bail bond agent would be required to contain specific language to hold the surety or agent harmless from all losses not otherwise prohibited by law or rule. This provision would place in statute the substance of current Rule 4-221.140, F.A.C.

The bill has no fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Rule authorization requirements

In 1996, the Legislature substantially revised the Administrative Procedure Act (APA).¹ Among many other changes, the revised APA modified the standards which authorize rulemaking and provided for periodic review of rules by agencies with rulemaking authority.²

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards whose rules are not contained in the Florida Administrative Code (F.A.C.). However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Regulation of bail bond agents

Bail bond agents are regulated by the Department of Insurance,³ because a bail bond is a surety contract (an insurance product). When a bail bond agent files a bail bond, the agent must file along with the bond an affidavit or statement specifying the amount and source of any collateral or consideration that has been promised or received in connection with the bond.⁴

The Department of Insurance has identified three rules relating to collateral security agreements involving bail bond agents that exceed the department's rulemaking authority. The department adopted these rules many years ago, apparently in response to the affidavit requirement of s. 903.14, F.S.:

¹ See Ch. 96-159, Laws of Florida.

² Prior to these revisions of the APA, it was generally held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

³ See Ch. 648, F.S.

⁴ Section 903.14, F.S.

Rule 4-221.125, F.A.C., readopted in 1974, requires that bail bond agents use an affidavit when they accept collateral security for a bail bond. The affidavit provides for the amount and source of security or consideration received by an agent or surety for posting a bond.

Rule 4-221.130, F.A.C., adopted in 1969, requires that agents may utilize, in lieu of an affidavit, a statement specifying the amount or source of collateral or consideration.

Rule 4-221.140, F.A.C., readopted in 1974, requires that indemnity agreements between the agent and principal (the arrestee) contain certain "hold harmless" language to protect the agent from any losses which may occur in writing the bail bond.

B. EFFECT OF PROPOSED CHANGES:

The Department of Insurance would be granted the statutory authority to adopt rules setting out the form of the statutorily-required affidavits and statements of the source and amount of the collateral or consideration for a bail bond. The effect of this provision would be to authorize current Rules 4-221.125 and 4-221.130, F.A.C.

The indemnity agreement between the principal (the person seeking the bail bond) and the surety (bail bond company) or bail bond agent would be required to contain specific language to hold the surety or agent harmless from all losses not otherwise prohibited by law or rule. This provision would place in statute the substance of current Rule 4-221.140, F.A.C.

The bill would take effect October 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill provides statutory authority for certain current rules of the Department of Insurance, as described under "Effects of Proposed Changes," above.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 648.442, F.S.

E. SECTION-BY-SECTION RESEARCH:

N/A

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None. The bill maintains the current status of Department of Insurance rules relating to bail bond agents.

2. Direct Private Sector Benefits:

None. The bill maintains the current status of Department of Insurance rules relating to bail bond agents.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. FISCAL COMMENTS:

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Leonard Schulte

Stephen Hogge

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:

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