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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1327
RELATING TO: Bail Bond Agents
SPONSOR(S): Representative(s) Garcia
TIED BILL(S):

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

- (1) BUSINESS REGULATION YEAS 11 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Chapter 648, Florida Statutes, provides for the licensing of bail bond agents and runners and for the regulation by the Department of Insurance (DOI) of the business of issuing bail bonds.

The bill addresses numerous regulatory provisions of the bail bond statutes. The bill: deletes reference and requirements for licensure of "runners;" requires managing general agents and certain representatives of other entities to be licensed as bail bond agents; and provides for temporary permits.

The bill: revises provisions relating to build-up funds; requires insurers to provide certain financial information to bail bond agents and agencies; revises provisions relating to licensure and appointment of bail bond agents; revises requirements for qualification as an agent; revises provisions relating to the issuance of a temporary limited license; requires supervising agents to certify employment information of temporary agents to the DOI; and revises provisions to limit access to certain records by the public.

The bill requires mandatory classroom instruction prior to reexamination for applicants for licensure; increases the required number of hours of continuing education; and increases the required number of years of experience for approval as a supervising classroom instructor.

The bill further: requires designation of a primary bail bond agent and notification to the DOI; provides duties of a primary bail bond agent; requires additional information upon appointment of a managing general agent; provides requirements for maintenance of records and location of offices; revises provisions relating to collateral security; specifies additional prohibited activities; provides additional causes for denial, suspension, or revocation of a license or appointment; increases fines for violations; and authorizes the DOI to impose civil assessments in addition to administrative and criminal sanctions.

The DOI estimates that any increase in administrative costs to the agency will be absorbed within existing resources.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. Less Government - The bill is designed to strengthen many of the regulatory responsibilities of the DOI and in so doing would create additional responsibilities for those who are regulated. The bill requires an affidavit be filed with the DOI when receiving a new or additional appointment affirming that business obligations of appointing insurers of the licensee have been satisfied. Forms are also required to be filed relating to discharging forfeitures and judgments on bonds written by the licensee. The bill expands requirements for filing notice with the DOI to include arrest for a crime punishable by at least 1 year of imprisonment. The bill requires the filing with the DOI of an affidavit attesting that no unpaid premiums, judgments or forfeitures are due by a managing general agent of an insurer. The bill requires a previously or currently appointed agent to file with the DOI an affidavit stating that no collateral has been jeopardized by the agent and related records are available for inspection by DOI or the insurer.

2. Lower Taxes - The bill specifies that fines for operating without a license or an appointment by an insurer shall be \$5000 in addition to penalties imposed under s. 775.082, F.S. The bill increases administrative fines from \$500 to \$5000 and from \$2500 to \$20,000 for willful violations. The bill creates a civil assessment in addition to other penalties under this chapter in an amount of \$5000 for improper solicitation of business. The bill creates an administrative fine in an amount of five times the dollar amount of any collateral that is held for the failure to properly account for and return collateral.

3. Individual Freedom - The bill requires that in addition to current licensure requirements an applicant for a temporary license possess a high school diploma or its equivalent and be a US citizen or a legal alien. The bill increases the number of classroom hours of instruction in order to qualify for a temporary license and requires a passing grade of at least 80 percent. The bill requires a temporary agent to conduct business only when accompanied by a supervising agent or a licensed and appointed bail bond agent from the agency where the temporary agent is employed. The bill defines "bail bond agency" as a place of business located at a permanent location in this state and prohibits ownership or control of an agency unless the person is a licensed and appointed agent. The bill requires the designation of a primary bail bond agent for each agency location and notification to the DOI. It defines "primary bail bond agent" to mean a licensed agent who is responsible for the overall operation and management of a particular agency location. The bill limits solicitations for services at the residence of a person or their family, prohibits the use of threat or coercion to collect payments that are due, and prohibits soliciting business on the grounds of a jail or courthouse. The bill prohibits the use of an agency name that implies a reduced rate of premium and prohibits advertising that the agency is associated with government agencies. The bill prohibits the use of the term free in

advertisements and requires the use of a company name on letterhead or business card before the name may be used for advertising.

4. Personal Responsibility - The bill is designed to implement many of the recommendations of the bail bond study panel by creating additional requirements and responsibilities for bail bond agents. Recommendations of the bail bonds study panel state that there is a concern that managing general agents have not been sufficiently regulated by statute and that liability can often not be assessed for actions or omissions. The recommendations also state that there have been problems with agents moving from company to company and leaving liabilities or collateral obligations unfulfilled. The bill prohibits an agency from using the services of any person who has been charged with a crime and prohibits an agency from using the services of anyone who is found guilty or has pled nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more.

B. PRESENT SITUATION:

Chapter 648, Florida Statutes, provides for the licensing of bail bond agents and runners and for the regulation of the business of issuing bail bonds by the Department of Insurance (DOI). The bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court. Regulation generally limits the amount of premium which can be charged, limits the type of collateral which can be demanded, limits the bail bond agent's ability to charge additional expenses, and requires that the collateral be returned in a timely manner once the case is closed and the bond has been canceled.

Chapter 648, F.S., has been subject to sunset review three times in the last 14 years. In 1982, the sunset review led to several major revisions as found in chapter 82-175, LOF, including an expansion of the grounds for denial and suspension of licenses and increasing administrative fines. The sunset review in 1984 (chapter 84-103, LOF), provided for the creation of a Bail Bond Regulatory Board within the DOI and the prohibition of various acts by bail bond agents. The third sunset review was in 1990, (chapter 90-131, LOF), clarified the responsibilities of bail bond agents and runners and equipped the DOI and the criminal justice system with additional authority to eliminate abuses in the bail bond system.

The latest revisions of this chapter occurred in 1996 with substantive revisions to various provisions pursuant to HB 1029, chapter 96-372, LOF.

With the growth in the bail bond industry over the past several years, there has been some sentiment for additional statutory changes to further regulate the industry. During the interim following the 2001 legislative session, the Commissioner of Insurance appointed a task force group to study issues relating to the bail bond industry and make recommendations for revisions to chapter 648, F.S. The panel consisted of industry members, representatives of the DOI, the clerks of the circuit court, the states attorneys office and the sheriffs office.

C. EFFECT OF PROPOSED CHANGES:

This bill is designed to implement many of the recommendations of the "Bail Bond Blue Ribbon Panel" (the Panel) as reported in the groups' final report issued in October 2001.

See Section-By-Section part of this analysis below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends the title of chapter 648, F.S., to rename the chapter "Bail Bond Agents" rather than "Bail Bond Agents And Runners."

Recommendation #1 of the Panel states that current statutes do not properly define the location or nature of the bail bond business and the requirements for record keeping are insufficient.

Section 2. Amends s. 648.25, F.S., relating to definitions, to delete definitions of "runner" and "agency;" Section 4 of the bill redefines the term "bail bond agency." Defines "temporary bail bond agent" to include a bail bond agency and requires a temporary agent to conduct business only when accompanied by a supervising agent or a licensed and appointed bail bond agent from the agency where the temporary agent is employed.

Recommendation #2 of the Panel states that there is a concern that managing general agents have not been sufficiently regulated by statute and that liability can often not be assessed for actions or omissions. The recommendations also state that there have been problems with agents moving from company to company and leaving liabilities or collateral obligations unfulfilled.

Section 3. Amends s. 648.27, F.S., to require that a managing general agent also be licensed as a bail bond agent; requires an entity that is not an individual to maintain at least one owner, officer or director as a licensed agent.

Recommendation #1 of the Panel states that current statutes do not properly define the location or nature of the bail bond business.

Section 4. Creates s. 648.275, F.S., to define "bail bond agency" as: 1) a place of business located at a permanent location in this state or 2) as an entity that charges a fee for the release from custody of a person accused of a crime or 3) engages in activity that may be performed only by a licensed and appointed bail bond agent. Prohibits ownership or control of an agency unless the person is a licensed and appointed agent. Provides for the issuance of a 2 year temporary license by the DOI upon the death or incapacitation of a licensed owner of an agency for purposes of settling the estate.

Recommendation # 5 of the Panel states that funds have been required to be held in trust by insurers to assure that judgments would be satisfied. The Panel states there have been continuing disputes as to when funds have not been accounted for or when there is a question over the ownership of the funds.

Section 5. Amends s. 648.29, F.S., relating to build-up funds, to require that build-up funds or other funds pledged to be used to indemnify the insurer by the agent be held in a financial institution in this state; the funds must be held jointly in the name of the agent or the agency and the insurer; the funds are stated to be held as a trust fund account by the insurer as indemnification against potential losses or other costs related to the bail transaction; requires insurers to provide all account statements to agents and agencies.

Recommendation #2 of the Panel states that there is no current statutory provision prohibiting an agent from moving from one insurer to another and thus leaving obligations, liabilities, and collateral issues unresolved.

Section 6. Amends s. 648.30, F.S., relating to licensure and appointment of agents, to include entities other than individuals and temporary agents to be authorized to perform the duties of an agent and require licensure and appointment under the provisions of chapter 648,F.S.

Section 7. Amends s.648.31, F.S., to delete a reference to the term runner.

Recommendation #1 of the Panel states that current statutes do not properly define the nature of the bail bond business.

Section 8. Creates s. 648.335, F.S., to cite legislative intent that a bond may be issued by a licensed agent for pretrial or appellate cases to ensure the attendance of a defendant at criminal proceedings.

Recommendation #3 of the Panel states that there was a desire of the Panel members to create stricter standards for education and qualifications for bail bond agents and to require stricter supervision of temporary agents.

Section 9. Amends s. 648.34, F.S., relating to qualifications for licensure, to include the possession of a high school diploma or its equivalent and the requirement that an applicant for licensure be a US citizen or a legal alien.

Section 10. Amends s. 648.355, F.S., relating to temporary licenses, to require that an applicant for a temporary license possess a high school diploma or its equivalent and be a US citizen or a legal alien; to increase the number of classroom hours of instruction on the criminal justice system in order to qualify for a temporary license; requires a passing grade of at least 80 percent in the training course; an insurer is required to appoint a temporary licensee in the same manner as a supervising bail bond agent under the insurer; requires the supervising agent to report to the DOI on the work hours of the temporary agent; extends the life of a temporary license from one year to 18 months and allows for application for a regular license after one year rather than 6 months of temporary licensure; specifies that the actions of a temporary licensee must be conducted under supervision of a licensed agent.

Recommendation #1 of the Panel states that current statutes do not properly define the location or nature of the bail bond business and though records are required to be maintained there is no particular requirement for the location of the records.

Section 11. Amends s. 648.36, F.S., to require all licensees to maintain records not just agents; removes the authority of the general public to access bail bond licensee records and authorizes the DOI to access these records.

Recommendation #3 of the Panel states that there was a desire of the Panel members to create stricter standards for education and qualifications for bail bond agents.

Section 12. Amends s. 648.381, F.S., relating to examinations, to require retaking 120 hours of classroom training for licensure if the applicant for licensure has failed the examination on three occasions.

Recommendation #6 of the Panel states that there is no current statutory provision prohibiting agents from moving from one insurer to another. The Panel notes there are often obligations, liabilities, and collateral issues that are left unresolved creating problems with the transfer of these business responsibilities.

Section 13. Amends s. 648.382, F.S., relating to the appointment of agents by an insurer, to require an affidavit be filed with the DOI when receiving a new or additional appointment affirming that business obligations of appointing insurers of the licensee have been satisfied; forms are also required to be filed relating to discharging forfeitures and judgments on bonds written by the

licensee; expands requirements for filing notice with the DOI to include arrest for a crime punishable by at least 1 year of imprisonment.

Sections 14 and 15. Amends s. 648.383 and 648.384, F.S., to delete reference to the term runner.

Section 16. Amends s. 648.385, F.S., to delete a reference to an out of date time requirement for continuing education compliance.

Recommendation #3 of the Panel states that there was a desire of the Panel members to create stricter standards for education and qualifications for bail bond agents.

Section 17. Amends s. 648.386, F.S., to increase the availability of classroom curriculum by instructional schools from two 80 hour courses per year to two 120 hour courses; increases experience requirements for supervising course instructors from 5 years in every 10 year period to 10 years in every 15 year period.

Recommendation #2 of the Panel states that there is a concern that managing general agents have not been sufficiently regulated by statute and that liability can often not be assessed for actions or omissions.

Section 18. Creates s. 648.387, F.S., to require the designation of a primary bail bond agent for each agency location and notification to the DOI; defines "primary bail bond agent" to mean a licensed agent who is responsible for the overall operation and management of a particular agency location.

Recommendation #8 of the Panel states that case law has called into question the statutory ban on employment of felons in the bail industry and there is a need to clarify and provide easier enforcement, in addition to current licensing prohibitions. Those persons who have been convicted of, pled guilty to, or have been found guilty of a felony, regardless of adjudication, may not be an employee, agent, contractor, or act in any other capacity on behalf of a bail bond agent or agency.

Section 18 of the bill also prohibits an agency from using the services of any person who has been charged with a crime; prohibits an agency from using the services of anyone who is found guilty or has pled nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more.

Recommendation #2 of the Panel states that there is a concern that managing general agents have not been sufficiently regulated by statute and that liability can often not be assessed for actions or omissions.

Section 19. Amends s. 648.388, F.S., to require the filing with the DOI of an affidavit attesting that no unpaid premiums, judgments or forfeitures are due by a managing general agent of an insurer.

Sections 20 and 21. Amends s. 648.39 and 648.41, F.S., to delete references to the term runner.

Recommendation #4 of the Panel states that unlawful solicitation of bail bond business is a substantial regulatory issue for the DOI. The Panel felt that the statutes should be tightened and penalties increased to provide increased regulatory tools relating to solicitation of business.

Recommendation #7 of the Panel states that advertising statutes have proved too vague and lax to provide sufficient guidance to the industry and the DOI.

Section 22. Amends s. 648.44, F.S., relating to prohibitions, to limit solicitations for services at the residence of a person or their family; to prohibit the use of threat or coercion to collect payments

that are due; and to prohibit soliciting business on the grounds of a jail or courthouse; to prohibit the use of an agency name that implies a reduced rate of premium; to prohibit false advertising or the association with government agencies; to prohibit the use of the term free in advertisements; and to require the use of a company name on letterhead or business card before the name may be used for advertising

Recommendation #11 of the Panel states that administrative penalties have not proven to be sufficient deterrent in many areas involving bail activity.

Section 23. Amends s. 648.441, F.S., to specify that fine penalties for operating without a license or an appointment by an insurer shall be \$5000 in addition to penalties imposed under s. 775.082, F.S.

Recommendation #10 of the Panel states that statutory provisions have been insufficient to assure that collateral is properly taken, maintained, and returned to consumers and that additional accountability and penalties are needed.

Section 24. Amends s. 648.442, F.S., relating to collateral security, to prohibit the taking of a quitclaim deed for real property may not be taken as collateral for a bail bond; prohibits a managing general agent from holding collateral security in excess of \$5000; requires a previously or currently appointed agent to file with the DOI an affidavit stating that no collateral has been jeopardized by the agent and related records are available for inspection by DOI or the insurer.

Recommendation #9 of the Panel states that there have been problems with some bail agents surrendering a defendant within a short time of release and retaining the premium for the bond with no accountability or explanation for the surrender.

Section 25. Amends s. 648.4425, F.S., relating to notices, to require a statement of surrender be provided to a defendant who has been surrendered or recommitted by an agent.

Recommendation #11 of the Panel states that administrative penalties have not proven to be sufficient deterrent in many areas involving bail activity.

Section 26. Amends s. 648.45, F.S., relating to suspension or revocation of a license, to provide penalties for providing false information or conducting untrustworthy business practices.

Section 27. Amends s. 648.50, F.S., to delete reference to the term runner.

Recommendation #11 of the Panel states that administrative penalties have not proven to be sufficient deterrent in many areas involving bail activity.

Section 28. Amends s. 648.28, F.S., to increase administrative fines from \$500 to \$5000 and from \$2500 to \$20,000 for willful violations.

Recommendation #11 of the Panel states that administrative penalties have not proven to be sufficient deterrent in many areas involving bail activity.

Section 29. Creates s. 648.525, F.S., to create a civil assessment in addition to other penalties under this chapter in an amount of \$5000 for improper solicitation of business.

Recommendation #10 of the Panel states that statutory provisions have been insufficient to assure that collateral is properly taken, maintained, and returned to consumers and that additional accountability and penalties are needed.

Section 30. Amends s. 648.571, F.S., to require a written request for the discharge of a bond be provided to the indemnitor by the agent and the agent must keep a copy of the written request; allows an agent to charge fees in connection with the payment of collateral with a credit card; creates an administrative fine in an amount of five times the dollar amount of any collateral that is held for the failure to return the collateral.

Sections 31, 32, and 33. Amends s. 648.501, 624.523, and 843.021, F.S., to delete references to the term runner.

Section 34. Repeals s. 648.37, F.S., relating to qualifications for licensure as a runner.

Section 35. Provides for severability.

Section 36. Effective date – July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides for substantial increases in fines and the creation of new penalties. Additional revenues generated from these sources could be anticipated to offset some of the administrative requirements created in other parts of the bill as reflected in 2. below. The DOI has not provided estimated increased revenue amounts based on the new penalties.

2. Expenditures:

The Department of Insurance states, "any increase in administrative costs to the agency will be absorbed within existing resources."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Council Director:

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