

STORAGE NAME: h1115.in
DATE: March 10, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1115
RELATING TO: Bail bond premiums
SPONSOR(S): Representative Bense
TIED BILL(S):

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

- (1) INSURANCE
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Currently, bail bond agents retain as much as 90 percent of the premium collected on bail bonds. This is a reflection of the amount of risk retained and work performed by the bail bond agent in the transaction of bail bond business. Insurers writing bail bonds are not liable to pay the amount of a bail bond unless the defendant does not appear for judicial proceedings and the bail bond agent is unable to pay the bail amount (which is often secured by some form of collateral from the defendant).

Florida law required insurers to submit financial statements with the Department of Insurance to aid the Department in monitoring the solvency of insurers. The manner in which financial information is compiled and reported is determined by the state in which the insurer is domiciled. Therefore, foreign insurers writing business in Florida compile financial reports in accordance with the law of their home state.

Florida law requires insurers writing bail bond insurance to report the gross amount of premiums written, including the premium retained by the bail bond agent. In several other states, including California, Maryland, and Texas, insurers are permitted to report bail bond premiums net of the premiums retained by the bail bond agent. As a result, Florida domestic bail bond insurers -- whether doing business in Florida or in other states -- would exceed state premium-to-surplus ratio limits sooner than insurers from several other states. Therefore, Florida bail bond insurers would not be able to write as much bail bond business as similarly situated insurers from other states.

This bill revises Florida's reporting requirements for bail bond insurers so they report bail bond premiums on their financial statements net of premiums retained by bail bond agents. As a result, the bill would enable Florida bail bond insurers to write as much bail bond insurance business as insurers from other states.

This bill is not expected to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

B. PRESENT SITUATION:

Bail and Bail Bonds

Bail is a form of security provided to a court to ensure that a defendant will appear for judicial proceedings. Defendants attempting to post bail typically do so through the purchase of a bail bond through a bail bond agent, who is usually a limited surety agent.¹ Bail bond agents are regulated under Chapter 648, F.S., by the Department of Insurance. Statutes relating to the practice of bail bonding are located in Chapter 903, F.S.

Bail Bond Insurance

Under the typical bail bond arrangement, the defendant pays to the bail bond agent a premium, which is capped by the Department of Insurance at a rate of 10 percent of the bail amount.² The insurance company then issues a bail bond in the amount of the bail. If the defendant does not appear for judicial proceedings and cannot be located within a specified time, the bail bond agent must pay the bail amount to the court. If the bail bond agent is unable to pay the bail amount, then the insurance company is responsible for paying the bond amount to the court.³

The premium paid to the bail bond agent is split between the bail bond agent, the managing general agent, and the insurance company. Each party's share of the premium is subject to negotiation between the insurer and the agents. Unlike title insurance, where the law caps the amount of premium that can be retained by the agent, Florida law does not limit the

¹ Some bail bond agents are licensed as "professional bail bond agents" which are persons who pledge money, postal money orders, or cashiers checks as security for a bail bond. See s. 648.25(7), F.S.

² Bail bond agents also usually require the defendant to post some form of collateral equalling the total amount of the bail.

³ As financial security for ensuring the bail bond agent is able to pay the bail amount, the law permits the insurer to establish a "build-up" fund, which are moneys set aside in a trust account to be used when a defendant does not appear for judicial proceedings.

amount of premium that can be retained by the bail bond agent.⁴ According to the Department of Insurance, the percentage of the premium retained by the bail bond agent can be up to 90 percent or more.

Bail bond agents retain such a large portion of the premium because of the risk retained by the agent and because of the work performed in obtaining collateral and ensuring that the defendant appears for court. If the defendant does not appear for court, the bail bond agent is responsible for paying the amount of the bond to the court. It is only when the bail bond agent has become insolvent and cannot pay that the insurance company would be responsible for paying the bond.

Insurer Reporting Requirements

Generally

Under Florida law, insurers are required to submit financial reports to the Department of Insurance detailing the insurer's financial condition, transactions, and affairs.⁵ Items required to be reported include premiums, losses, and reserve information. This information enables the Department of Insurance to regulate insurers' solvency.

The manner in which information is compiled and reported in insurer financial reports is determined by the state where the insurer is domiciled. Therefore, Florida domestic insurers submit their financial reports to the Department of Insurance (and to insurance departments in other states) based on the specific requirements of Florida law, while foreign insurers (insurers from other states) compile their financial information in accordance with their state's specific requirements.

Reporting of Bail Bond Premium in Florida

Historically, insurers writing bail bonds in Florida have been required to report their gross premiums written on bail bonds, inclusive of the premiums retained by bail bond agents. For example, assume a defendant pays a \$100 premium to a bail bond agent for a bail bond. Assuming the bail bond agent retains 90 percent of the premium, the agent would keep \$90 and the insurer would keep \$10. Under Florida's reporting requirements, the insurer is required to report the full \$100 on its financial reports.

Reporting of Bail Bond Premium in Other States

According to the Department of Insurance, in several other states, including California, Maryland, and Texas, insurers writing bail bonds are permitted to report bail bond premiums net of premiums retained by the bail bond agent. Therefore, using the same example from above, insurers in these states would only report the \$10 that it actually received.

The National Association of Insurance Commissioners (NAIC) has not developed a model code or regulation on whether bail bond premiums reported for financial purposes should be reported on a gross basis or net of the premiums retained by the bail bond agent.

⁴ See s. 627.782(1), F.S. (requiring title insurers to retain no less than 30 percent of the premium).

⁵ See e.g., ss. 624.424 and 624.4241, F.S.

Staff could not identify any other line of insurance in which insurers report premiums net of premiums retained by the insurance agent.

Premium-to-Surplus Requirements

As a measure of insurers' financial stability, Florida law prohibits insurers from writing premiums which exceed some factor of their surplus. For example, Florida law authorizes the Department of Insurance to suspend an insurers' certificate of authority if an insurer's:

- adjusted gross written premiums are more than 10 times the insurer's surplus; or
- adjusted net written premiums are more than 4 times the insurer's surplus.⁶

Because Florida domestic insurers report premiums on a gross basis and insurers from several other states report on a net basis, Florida domestic insurers would exceed Florida's premium-to-surplus ratio limits much sooner than similarly situated insurers from those other states. As a result, Florida domestic insurers' would not be permitted to write as much bail bond insurance business as a competitor from a state which permits its insurers to report premiums on a net basis.

The Department of Insurance has taken the step of allowing the insurers to report bail bond premiums net of the premiums retained by the bail bond agent. According to the Department of Insurance, if the Legislature does not address this issue statutorily, it plans to return to its previous reporting requirement.

Insurance Premium Tax

All insurers writing insurance in Florida must pay to the Department of Revenue a tax based on their premiums written in Florida.⁷ The Department of Revenue levies this tax on the direct written premiums reported by insurers on the "Exhibit of Premiums and Losses" page in their annual financial statement.

The revenues generated from this tax were approximately \$425 million in Fiscal Year 1998/99.⁸ The bulk of the revenue from this tax goes to the General Revenue Fund, while the remaining portions go to the Insurance Commissioner's Regulatory Trust Fund, the Police and Firefighters Premium Tax Trust Fund, and the Emergency Management Preparedness and Assistance Trust Fund.⁹

⁶ Section 624.4095(1), F.S.

⁷ See s. 624.509, F.S.

⁸ The Florida Senate, 1999 Florida Tax Handbook, 63 (1999).

⁹ Id.

C. EFFECT OF PROPOSED CHANGES:

Domestic insurers writing bail bond insurance would be required to report their premiums to the Department of Insurance net of any premiums retained by bail bond agents and managing general agents. As a result, Florida bail bond insurers would be able to write as much bail bond insurance as insurers from other states. But, domestic insurers would not be permitted to report premiums that are less than 6.5 percent of the total consideration received by the agent for all bail bonds written by the agent.

Domestic insurers would still be required to disclose in the notes of the financial statement:

- the gross amount of bail bond premiums written in each state by agents for the company;
- the total amount of premium taxes incurred by the insurer in each state;
- and the total consideration withheld by agents and not reported as an expense by the insurer in financial statements.

It is not clear from the bill whether insurers would pay premium tax based on gross bail bond premiums or on bail bond premiums net of the premiums retained by the bail bond agent. See Other Comments section of the analysis.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is not expected to have an impact on state revenues. See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is not expected to have an impact on local government revenues. See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because Florida domestic insurers report premiums on a gross basis and insurers from several other states report on a net basis, Florida domestic insurers would exceed Florida's premium-to-surplus ratio limits much sooner than similarly situated insurers from those other states. As a result, Florida domestic insurers' would not be permitted to write as much bail bond insurance business as a competitor from a state which permits its insurers to report premiums on a net basis.

This bill permits Florida domestic insurers to report premiums on their annual financial statements net of premiums retained by the bail bond agent. As a result, Florida domestic insurers would be able to write as much bail bond business as competitors from states which allow insurers to report bail bond premiums on a net basis.

D. FISCAL COMMENTS:

Whether this bill has a fiscal impact on the state or on local governments depends upon whether the bill revises the bail bond premiums which are subject to the premium tax pursuant to s. 624.509, F.S. See the Other Comments section of the analysis.

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 to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

Even assuming the bill reduced the amount of premium tax revenue generated, the bill would not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Premium Tax

The bill authorizes insurers writing bail bond insurance to report premiums on their annual financial statements net of premiums retained by the bail bond agent. Since bail bond agents retain as much as 90 percent of the premium on bail bond insurance transactions, insurers would report significantly fewer premiums on their financial statements. If bail bond insurers also paid premium tax on this base, state revenues would drop. Although it is not specified in the bill, the language in the bill suggests that insurers writing bail bond insurance would continue to pay premium tax on their gross premiums. Assuming this is the correct interpretation, the bill would not have a fiscal impact on the state or local governments.

For example, subsection (1) of the bill states that it revises direct written premiums only "[f]or purposes of reporting in financial statements required to be filed with the department pursuant to s. 624.424." Also, subsection (4) of the bill requires insurers to continue to report in the notes of the financial statements its gross premiums written in each state and the premium taxes paid in other states where it writes business. Therefore, presumably, bail bond insurers' gross premiums would continue to be used for other purposes, such as premium tax.

However, in administering the premium tax, the Department of Revenue equates gross premiums with "direct premiums written."¹⁰ Since this bill would change the amount of direct premiums written reported by bail bond insurers on their annual statement, arguably the premium tax base could change as well.

The sponsor has requested staff to prepare an amendment which would specify that bail bond insurers continue to pay the premium tax based on gross premiums, inclusive of premiums retained by the bail bond agent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge

¹⁰ For example, on the Department of Revenue's premium tax form, the Department of Revenue directs the insurer to "enter the direct premiums written . . . plus any service charge reported on the Florida Business Page from the Florida Annual Statement."