

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1395 Bail Bonds
SPONSOR(S): Insurance & Banking Subcommittee; Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Current law allows individuals who are qualified, licensed, and appointed by the Department of Financial Services (DFS) to perform the functions of a bail bond agent or temporary bail bond agent. A bail bond agent must prove his or her suretyship when placing a bond by attaching currency in the amount of the bond or by attaching a power of attorney form issued by the insurance company he or she utilizes. The power of attorney form must be approved by DFS.

This bill amends Florida Statutes to explicitly allow for the electronic transmission of bail bonds by licensed bail bond agents in the judicial circuit and county which the bail bond agency is located, with the approval of the sheriff of the respective county. The bill requires the bail bond agent to have a physical location within the judicial circuit where the electronic bond is submitted. The bill expands the definition of "bail bond agency" to include an entity located in a judicial circuit that transmits electronic bonds, while clarifying that only a licensed, appointed, and registered bail bond agent may transmit an electronic bond with an attached power of attorney (which must be approved by the DFS).

The bill prohibits a licensed bail bond agent from authorizing another person to countersign his or her name to a bond or allow an unlicensed person or a licensed person not properly appointed to transmit or post an electronic bond.

This bill does not appear to have any fiscal impact on state or local governments. The DFS has stated that compliance with this bill would be absorbed into their current operations, with only minimal, if any, additional workload.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 648 of the Florida Statutes governs the practices of bail bond agents. Currently, the Department of Financial Services (DFS) administers the provisions set forth in this chapter and is tasked with enforcement of rules and regulations.¹

In order for a person to act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions prescribed for bail bond agents, he or she must be qualified, licensed, and appointed by DFS.² In order for a bail bond agent to become a surety, he or she must register with the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides.³

A bond agent must justify his or her suretyship by attaching a copy of the power of attorney issued by the surety/insurance company or by attaching currency to the bond, usually in the form of a money order or cashier's check. Every insurer engaged in the writing of bail bonds through bail bond agents must submit and have approved by DFS a sample power of attorney, which is the only form of power of attorney the insurer will issue to bail bond agents in the state.⁴

The current industry norm is for licensed bail bond agents to physically deliver the bond and power of attorney paperwork to the court or detention center.⁵ Gadsden, Jefferson, and Madison counties accept electronic transmittal of bail bonds. To date, there have been no issues reported regarding the use of electronic transmittal in these counties.⁶

Effect of the Bill

This bill amends sections within chapter 648 and chapter 903 of the Florida Statutes to explicitly allow for the electronic transmission of bail bonds by licensed bail bond agents in the judicial circuit and county which the bail bond agency is located, with the approval of the sheriff of the respective county. The bill requires the bail bond agent to have a physical location within the judicial circuit where the electronic bond is submitted. The bill expands the definition of "bail bond agency" to include an entity located in a judicial circuit that transmits electronic bonds, while clarifying that only a licensed, appointed, and registered bail bond agent may transmit an electronic bond with an attached power of attorney.

Additionally, the bill requires that a sample power of attorney be attached to the electronic bond which must be approved by DFS before it can be used for submission. The power of attorney is designed to justify the bail bond agent's suretyship when electronically transmitting a bail bond.

The bill prohibits a licensed bail bond agent from authorizing another person to countersign his or her name to a bond. It also prohibits a licensed and appointed bail bond agent from being able to facilitate, or allow an unlicensed person or a licensed person not properly appointed to transmit or post an electronic bond.

B. SECTION DIRECTORY:

¹ Section 648.26, F.S.

² Section 648.30, F.S.

³ Section 648.42, F.S.

⁴ Section 903.09, F.S.

⁵ Information obtained from representatives of the Florida bail bond industry, as provided to the staff of the Insurance & Banking Subcommittee on March 17, 2014.

⁶ Information obtained from the Department of Financial Services, March 17, 2014. On file with the Insurance & Banking Subcommittee staff.

Section 1: Amends s. 648.25, F.S. Amends the definition of “bail bond agency” to include an entity that is physically located in a judicial circuit and that transmits electronic bonds. Defines the terms “delivery”, “electronic bond”, and “surety”. Amends the definition of “temporary bail bond agent” to include “temporary licensee”.

Section 2: Amends s. 648.30, F.S. Clarifies that a person may not transmit or post an electronic bond with attached power of attorney unless he or she is a duly qualified, licensed, and appointed bail bond agent.

Section 3: Amends s. 648.42, F.S. Clarifies that a duly qualified, licensed, appointed, and registered bail bond agent may transmit or post electronic bonds in the judicial circuit in which the agency is located if the sheriff agrees to accept such bonds.

Section 4: Amends s. 648.43, F.S. Provides that an electronic power of attorney must be attached to an electronic bond and be approved by the Department of Financial Services.

Section 5: Amends s. 648.44, F.S. Clarifies that a bail bond agent or temporary bail bond agent may not transmit or post an electronic bond with an attached power of attorney unless he or she is: a duly qualified, licensed, appointed, and registered bail bond agent, registered in the county within the judicial circuit, and has an agency physically located within the judicial circuit the bond is being submitted. Clarifies that a bail bond agent may not authorize another person to countersign his or her name to a bond, facilitate, or allow an unlicensed person or a person without a proper appointment to transmit or post an electronic bond.

Section 6: Amends s. 648.441, F.S. Provides that an insurer or managing general agent may not furnish to an unlicensed individual or entity a form necessary for the electronic transmittal or posting of electronic bonds.

Section 7: Amends s. 903.09, F.S. Provides the methods for which a bail bonds agent must justify their suretyship when posting an electronic bond. Clarifies that this section does not prohibit multiple sureties from each posting any portion of a bond amount and being liable for only that amount, so long as the total amount posted by the cosureties is equal to the amount of the bond required.

Section 8: Amends s. 903.101, F.S. Reiterates that a duly qualified, licensed, appointed, and registered bail bond agent may transmit or post an electronic bond in the judicial circuit in which the bail bond agency is located if the sheriff agrees to accept such electronic bonds.

Section 9: Amends s. 903.33, F.S. Clarifies that an electronic bond is considered an original document and may not be discharged on the ground that it is not such a document.

Section 10: Amends s. 903.34, F.S. Provides requirements for a bond to be approved by a committing trial court judge or the sheriff.

Section 11: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill does not appear to have any impact on state expenditures. The DFS has stated that compliance with this bill would be absorbed into their current operations, with only minimal, if any, additional workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Bail bond agents may incur costs in opening an office within the judicial circuit where they plan to transmit electronic bonds, if they do not currently have a physical location within that judicial circuit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Insurance & Banking Subcommittee met and passed HB 1395 with two amendments.

Consistent with current law, the amendments required a surety company to hold a certificate of authority with the Office of Insurance Regulation. The bill incorrectly required the surety company to hold a certificate of authority with the Department of Financial Services.

This staff analysis has been updated to reflect these changes.