SUBJECT: Certifying bail bondsmen

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon, A. Reyna

0 nays

1 absent — Place

SENATE VOTE: On final passage, April 3 — 29-2 (Galloway, Nixon)

WITNESSES: *(On House companion, HB 2341)*
For — Bob Glasgow, Edward J. Dees Jr., and Ronnie D. Long, Professional Bondsmen of Texas; J. Sutton Taylor, Professional Bondsmen of Dallas

Against — Kathleen Braddock, Harris County District Attorney's Office; Bruce Carr, Harris County Sheriff's Department; Don Davis, Dallas County District Attorney's Office

BACKGROUND: Two types of private persons can be licensed to write bail bonds as sureties for appearance in criminal court. Property bondsmen pledge their property as trust for bail bonds, and corporate surety bondsmen work for insurance companies that are licensed to write bail bonds. Bail bondsmen are licensed and overseen by local county bail bond boards or local sheriffs.

DIGEST: SB 627 would require persons to have a certificate of registration issued by a new state bail bonds advisory council in order to execute a bail bond. Operating as a bondsman without a certificate would be a Class A misdemeanor, punishable by a maximum penalty of one year in jail and a $4,000 fine. Certificates would be valid for two years. Persons could be registered if they passed the certifying exam established by SB 627 and paid required fees. The bill also would establish continuing education requirements for renewing registrations.

Advisory council. SB 627 would establish the bail bondsman advisory council within the Texas Department of Licensing and Regulation (TDLR) to advise the TDLR commissioner on the contents of a certification examination and assist the department in evaluating continuing education programs. The council could also recommend standards for continuing education and topics to be covered in courses and propose rules to implement the requirements of this bill.

The council would be composed of nine members appointed by the commissioner. The council would include a state legislator, criminal defense lawyer, active Texas judge with experience in criminal law matters, an elected prosecuting attorney, a sheriff, two licensed agents working as corporate surety bondsmen, and two members licensed to execute bail bonds as noncorporate sureties. Members would serve two-year terms. They would not be entitled to compensation for service, but could be reimbursed for travel expenses at the rate provided to state employees.

Certification exam. The exam would cover topics involved in the operation of a bail bond business. TDLR would approve and grade the exam and would be required to offer the exam at least twice each year. Applicants would pay a $100 fee to cover exam administration costs. An applicant who failed could retake the exam after three months, but would have to pay the exam fee again. A person who failed the exam twice would have to wait two years before being eligible to retake the exam. Disputes concern the grading of an examination would be governed by the contested case provisions in the Government Code. Appeals of decisions to a district court would be governed by the Bail Bond Act.

Continuing education. Bondsmen would have to complete five hours of continuing education each year. TDLR would certify qualified education programs. Continuing education providers would be required to submit a list with the names of each person who participated in the approved course, the number of hours of instruction attended, and amount of fees paid by the participant. Providers could not waive fees for education courses. Individuals holding licenses issued by county bail bond boards would not be required to comply with the continuing education requirements until September 1, 1998.

Exemptions. The bill would exempt lawyers from registration and education requirements. It also would exempt from taking the certifying exams persons who:

- held a bail bonds license issued by a county bail bond board before September 1, 1997;

- held a bail bonds license issued by a county bail bond board before September 1, 1995, if the license was never revoked or suspended before it had expired and TDLR had not refused to renew the license; and

- had acted as a surety on a bond for compensation in a county in which a license was not required before September 1, 1997.

These persons could obtain a certificate of registration from TDLR by filing a sworn statement that they were eligible for exemption.

Effective dates. SB 627 would take effect September 1, 1997. TDLR would be required to adopt rules to implement the bill by December 1, 1997. Persons currently required to hold certificates of registration would have to receive certification by January 1, 1998.

SUPPORTERS SAY:

SB 627 would legitimize the bail bond industry by requiring registration certificates for all persons operating as bondsmen. The industry has been unfairly and inaccurately portrayed in the past, and a state level advisory council could help set standards to ensure the quality operation of bondsmen. The council would be composed of a nine-member board, only four of which would be from the bail bond industry. This would ensure broad representation of all interested parties.

SB 627 would help professionalize the bail bond industry by setting uniform continuing education requirements for all individuals executing bonds. Currently, in only a small percentage of Texas counties do county bail bond boards issue licenses to bondsmen. Bondsmen in other counties are not as strictly controlled, and, as a result, some bondsmen are not as well educated or regulated as they could be to effectively perform job duties. SB 627 would ensure all individuals knew how to properly execute bonds and add a much needed education requirement to supplement current licensing

practices. However, the bill would not apply to defense attorneys who often write bail bonds for their clients, since these professionals are already highly regulated in terms of both registration and education requirements.

SB 627 also would defer to local control of bondsmen. The advisory council would not be a regulatory or licensing authority and would simply serve to provide input into the TDLR rulemaking process as well as help create competency exams and minimum education requirements. The bill also would require that certain elected officials be members of the advisory council rather than permitting designees because elected officials have intimate knowledge of bail bondsmen and how their practices affect county business. Designees would not be as effective as elected officials in serving the advisory council.

The penalty for operating without a certificate would be sufficient to deter offenders. It also could affect a bail bondsmen's ability to receive a license from a county bail bond board or sheriff. Criminal background checks are conducted on applicants for licensing, and the licensing authority would probably take an offense of operating without a certificate into account with an application.

OPPONENTS SAY:

While SB 627 may appear to tighten regulatory control of bail bond businesses in Texas, it would create a biased advisory council primarily composed of bondsmen to regulate their own industry. There would be too much representation from the bail bond industry on the council without enough checks and balances from outside interested parties. This could expose the industry to relaxed regulation.

SB 627 would decrease oversight over bail bondsmen by shifting regulatory powers from the county level to the state level and would open the door for further erosion of local control. Local control is preferable to statewide regulation because local officials can craft policies to better suit the needs of their area.

Although promoting continuing education for bail bondsmen is a laudable effort, the provisions in SB 627 are misdirected. The advisory council would be not be nonpartisan and would only serve to increase government red tape. Many bondsmen are already required to be licensed by county bail

bond boards and another certification would not enhance the quality of the work they do.

OTHER OPPONENTS SAY:

SB 627 should be amended to allow elected officials to appoint designees to serve on the advisory council. Elected officials would be likely to miss council meetings, and without the presence of designees, the council would be even more lopsided in favor of bail bondsmen.

The penalty for operating without a certification would be too lenient. The bill should be amended to increase the penalty to prevent individuals convicted of operating without a certification from receiving a bail bond license.