

SUBJECT: Licensing and regulation of bail bond sureties

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Flores, Geren, Goolsby, Hamilton, D. Jones, Miles, Quintanilla, Thompson

0 nays

1 absent — Isett

WITNESSES: None

BACKGROUND: A bail bond is a deposit or other security given to guarantee the appearance of a defendant in a criminal case. A bail bond surety is a person who undertakes to pay money or perform other acts in the event that the defendant fails to meet the bond conditions, such as appearing before the court on a specific date. The surety is directly and immediately liable for the debt.

The 77th Legislature in 2001 enacted SB 1119 by Armbrister, which requires an applicant for a bail bond surety license to have at least one year of continuous work experience in the bail bond business. In 2005, the 79th Legislature enacted SB 624 by Hinijsosa to specify that the experience requirement include continuous employment with a licensed bail bond agent for at least one year. During this time, the licensee must work at least 30 hours per week and perform all aspects of the bonding business.

DIGEST: CSHB 465 would remove the requirement that a person must be employed by a licensed bail bondsman for one year to be eligible to be licensed as a bail bond surety.

An initial bail bond surety license would be valid for one year. During the first year a person held a surety license, the county bail bond board could review the license holder at any time to determine compliance, and such a review would be required at six months and prior to the one-year anniversary of the date the license was issued. The licensee could renew the license at one year if the licensee demonstrated compliance at the one-year review.

A person who charged a fee for assisting a defendant to obtain release on personal bond would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if he or she was not the person's lawyer.

CSHB 465 would take effect September 1, 2007, and would apply only to an application filed with a bail bond board on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 465 would strike a reasonable balance in allowing qualified people to become bail bondsmen more quickly while implementing more stringent review processes in the first year of licensure. Existing experience requirements were intended to prevent fly-by-night businessmen from shirking their professional duties as bondsmen to make quick money. Such bad actors would be better addressed through the mechanisms in CSHB 465 that would tighten regulatory standards in the first year of a bail bondsman's licensure.

The bail bond review board could review a new license holder at any time within the first year with mandated reviews at six months and prior to the first anniversary of license issuance. These reviews would reveal any corrupt practices before they could become significant problems, and the board could exercise its ability to suspend or revoke a license if such actions were deemed necessary. Safeguards already exist that an applicant for a license could never have been convicted of a felony or a crime of moral turpitude, and this would be verified by an extensive background check. The applicant also would have to put up the minimum required security in order to issue bail bonds.

Legitimate applicants for a bail bond surety license must be diligent enough to meet the minimum licensure standards and put up the minimum security. These applicants would not post such a large portion of their personal finances to begin working as bail bondsmen if they were not well informed of the responsibility they were undertaking. This personal interest in the business narrows down the applicant pool to only the most diligent individuals who could learn the bail bond business without the extensive experience requirements currently in statute. While other professions such as plumbers and electricians do have apprenticeship requirements, the health and safety of the community is more vested in the ability of these other professions to properly perform their duties. Bail bondsmen facilitate the legal system, and their profession does not entail similar life and safety concerns.

Currently, if a defendant has hired a bail bondsman and is instead released on a personal bond, the bail bondsman may charge the defendant a fee despite having performed no services pertaining to the defendant's release. CSHB 465 appropriately would prevent such unwarranted fees from being assessed. Only a defendant's attorney should be able to charge fees for obtaining the defendant a personal bond, because the attorney would be the defendant's legal advocate to negotiate the issuance of this bond with the judge. The State Bar of Texas has the ability to reprimand attorneys and judges for any inappropriate assessment of fees to a defendant.

OPPONENTS
SAY:

CSHB 465 would set the bail bond industry back several years by removing experience requirements for a bail bond surety applicant to obtain licensure. SB 1119 in 2001 and SB 624 in 2005 acknowledged the need for an applicant to work in the bail bond industry for an extended period of time in order to recognize the breadth of responsibilities he or she would undertake and the financial investment involved. The bail bond business is not as simple as obtaining a defendant's release from prison. A bail bondsman must provide defendants with notice of court appearances, make sure defendants appear in court on the proper days, and locate a defendant who fails to appear. The bondsman is liable for the bond debt if the defendant does not meet the conditions imposed by the court.

The experience requirement also would expose potential licensees to what the industry is really like so they do not discover after they had invested in the industry that they would rather pursue another line of work. The bail bond industry is more difficult to exit than most businesses because bondsmen accrue many outstanding liabilities. All of these liabilities would have to be addressed before the business could be closed. Also, it is a common practice for other professions — including plumbers, electricians, private investigators, and real estate brokers — to have apprenticeship requirements before licensing. Experience requirements ensure bail bondsmen know their business so that clients are not returned to jail inappropriately and the justice system does not incur unnecessary costs, such as defendants failing to show for their court dates and the cost of issuing and executing warrants.

CSHB 465 should restrict all parties, including attorneys, from charging a fee to obtain a defendant's release on a personal bond. Some attorneys inappropriately have charged large fees claiming they have negotiated a defendant's release on a personal bond. Whether or not a judge issues a

personal bond is at the judge's discretion, and the attorney does not carry any risk if the defendant fails to appear after signing a personal bond.