

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 739  
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Criminal Justice  
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### **DIGEST**

Currently, no experience or financial security is necessary for a person to enter the bail bonding business. S.B. 739 would require persons seeking to enter the bail bonding business to obtain a license and would require bondsmen to establish a separate cash collateral account.

### **PURPOSE**

As proposed, S.B. 739 sets forth provisions regarding the regulation of bail bondsmen.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 2372p-3, V.T.C.S., as follows:

#### Art. 2372p-3. LICENSING AND REGULATION OF BAIL BONDSMEN

Sec. 1. New heading: DECLARATION OF POLICY; APPLICATION. Provides that Sections 2 through 13 and 16 of this Act do not apply in a county with a population of less than 110,000 unless a County Bail Bond Board (board) has been created in that county. Makes a conforming change.

Sec. 2. DEFINITIONS. Defines "agent for a corporate surety," "applicant," "bondsmen," "corporate surety," "final judgment of forfeiture," "individual surety," and "license holder." Redefines "board" and "bond." Deletes the definition for "company."

Sec. 3. New heading: LICENSING REQUIREMENTS AND ELIGIBILITY. Prohibits a person from acting as a bondsman in a county subject to this Act other than a bondsman licensed in that county. Provides that an individual is not eligible for a license as an individual surety or as an agent for a corporate surety unless the individual meets certain requirements. Provides that a corporation is not eligible to be licensed as a corporate surety unless the corporation meets certain conditions. Deletes text regarding provisions applying to the execution of certain bail bonds, and text regarding the creation of the board and the designation of its members. Deletes text regarding ineligibility for a license under this act, for a person finally convicted of a felony or misdemeanor involving moral turpitude. Deletes existing Subsection (e) regarding the authorization of persons licensed to practice law in this state. Makes conforming and nonsubstantive changes.

Sec. 4. New heading: RECORDS AND COLLATERAL ACCOUNT REQUIRED OF LICENSE HOLDER. Requires an individual licensed under this Act to maintain a record of each bond the individual executes. Requires the individual to separately maintain the records for each county in which the individual is licensed Sets forth requirements to be included in the information for each bond the individual has executed. Requires a license holder to produce a record required to be maintained by this section for inspection by the applicable board on the written request, rather than demand, of the board or its representative. Requires a license holder to maintain a required record in a convenient place, and to be maintained for at least four years after the disposition of the case. Requires a licensed individual to maintain as trustee a cash collateral account separate from other accounts used for the operation of the bonding business. Requires the individual to execute a written agreement that describes the conditions under which collateral

will be refunded or retained. Requires the individual to deposit cash collateral into the collateral account not later than the first banking day after the date of receipt of cash. Prohibits a disbursement from being made from the cash collateral account for a purpose other than as a refund of the collateral on final disposition of the case for which the collateral was posted or on final judgment of forfeiture. Prohibits cash collateral from being retained except in accordance with the terms of the written agreement.

Sec. 5. COUNTY BAIL BOND BOARD. Provides that a board consists of certain persons. Requires a board to annually elect one of its members as presiding officer. Authorizes the presiding officer to vote on any matter pending before the board. Requires the board to hold its initial meeting not later than the 60th day after the date on which the board is created, and at least once a month thereafter. Provides that four members of a board constitute a quorum. Requires board action to have a majority vote by the members present and voting. Requires each rule or action of a board passed under this Act to be posted at certain locations for a period of 10 days prior to their effective date. Requires a board to post a proposed rule at specified locations for a period of 30 days before the date of consideration and adoption of a rule by the board. Sets forth powers and duties of a board. Sets forth prohibitions regarding requirements, inquiries, and limits of a board. Requires each fee collected by a board to be deposited in the county's general fund for use in the administration and enforcement of this Act. Authorizes the board to receive disbursements from the general fund for reasonable expenses incurred, but service on the board is considered an additional duty of office, and the members are not entitled to compensation for the service. Entitles a member to reimbursement for any expense actually incurred as a result of service. Deletes text regarding requirements for board members, and certain information concerning a board's powers and duties. Makes conforming and nonsubstantive changes.

Sec. 6. APPLICATION AND ISSUANCE OF LICENSE. Requires a person desiring to act as a bondsman to file an application for a license. Requires the application to be on a prescribed form and accompanied with a \$500 application fee. Sets forth requirements for the application regarding an individual applying for a license as an individual surety. Sets forth requirements for the application regarding an applicant that is a corporation applying for a license as a corporate surety. Requires a designated law enforcement officer to take a photograph and a set of fingerprints of each individual applicant. Requires a hearing to be held, after the required inquiry, not earlier than the 30th day or later than the 60th day after the date on which the applicant files the application. Provides that if no grounds for rejecting the application exists, a license is issued and is valid for 24 months after the date of the order approving the license application. Establishes that if there are grounds for denial, a written order specifying the grounds will be entered. Requires an order granting or denying a license to be signed by each member of the board. Requires a license holder, upon tentative approval, to perfect the license by filing a required security deposit within 90 days after the date of the order tentatively approving the license. Provides that the temporary license is rescinded if the security deposit is not paid within the specified period and the applicant must apply again. Establishes that in order to perfect a corporate surety's license does not require security deposit. Requires an applicant for an individual surety license or for a license as an agent for a corporate surety, upon notice that an application has been approved, to perfect the license by depositing with the county treasurer of the county in which the license is to be issued certain funds in the indicated amount. Prohibits the deposit from being less than a certain amount with regards to the county's population. Requires the county treasurer to hold the deposit in a special bail security fund. Authorizes an applicant for an individual surety to perfect the license by conveying in trust deeds to the property listed in the application. Requires property to be valued in the amount indicated on an appraisal made by a member in good standing of a nationally recognized professional appraiser society or trade organization. Prohibits the estimate from being less than a certain amount per county population. Requires the board to file the deeds of trust in the records of each county, and requires the license holder to pay the filing fees. Deletes text regarding information required on an application for a license as an individual surety; text regarding the applicant under certain sections; text regarding a corporation furnishing a letter of credit to satisfy a judgment of forfeiture; text prohibiting a bondsman from executing bonds exceeding a certain value, and factors that determine a bondsman's limit due to the amount of security held. Makes conforming and nonsubstantive changes.

Sec. 7. REAPPRAISAL OF REAL PROPERTY. Makes conforming changes.

Sec. 8. INDIVIDUAL AS SURETY. Authorizes a board to temporarily bar an individual surety

from executing a bail bond in that board's county if certain conditions exist. Requires a designated person to maintain a current list regarding certain transactions for each individual surety. Requires an officer, when an individual surety exceeds either the set limits or fails to satisfy a final judgment within 30 days, to notify each officer in the county authorized to accept a bail bond that the officer may not accept bonds from the individual surety until the individual complies with this section. Authorizes the individual surety to comply with the prescribed limits by posting additional security. Authorizes an individual surety whose license is in good standing to increase the individual surety's ratio limits at any time by posting additional security with the county. Prohibits an individual from holding more than one license as an individual surety within a county. Prohibits an individual surety from conducting a bonding business under more than one name.

Sec. 9. New heading: CORPORATE AS SURETY; AGENTS FOR CORPORATE SURETY. Provides that the certificate of authority to do business in this state issued to a corporation by the Texas Department of Insurance under the Insurance Code is conclusive evidence as to the sufficiency of the corporation's security, solvency, or credit. Provides that a board or local official is prohibited from requiring certain financial conditions of the corporation. Requires a corporation to disclose in the power of attorney any limit that the corporation imposes on an agent's authority to act for it in that county. Prohibits a board from refusing to issue a license to a corporation or its agent because of disclosure of a limit on the agent's authority. Requires each named agent to apply for and be issued a license in that county as an agent for that corporate surety, before executing a bail bond. Authorizes a corporate surety to authorize more than one agent to execute bail bonds in that county. Authorizes each agent to do business under an assumed name different from that of another agent. Provides that a corporation is not assumed to be doing business under an assumed name. Authorizes a corporate surety to be temporarily barred from executing a bail bond in a county for certain reasons. Provides that the agent's right to execute a further bond is restored on payment of that judgment of forfeiture. Prohibits an individual from holding more than one license for a corporate surety within a county. Deletes text regarding a corporation meeting requirements for executing bail bonds; and regarding separate licensing for power of attorney. Makes conforming and nonsubstantive changes.

Sec. 10. EXPIRATION AND RENEWAL OF LICENSE. Establishes that a license expires after 24 months, and may be renewed by filing an application with the board at least 30 days before the day on which the license expires. Requires the board to renew the license by written order unless there are grounds for refusal. Requires the board to state the reason for refusal in the written order refusing to renew the license. Provides that a renewed license expires 24 months after the date of renewal. Requires each license to show the license number and expiration date. Authorizes a license holder who fails to timely apply for a renewal to apply using the original requirements. Deletes text regarding renewal of a license; regarding fees and disbursement from the general fund; and regarding information on a license.

Sec. 11. New heading: REFUSAL, SUSPENSION, AND REVOCATION OF A LICENSE. Authorizes the board, after notice and hearing, to refuse to issue or renew, suspend, or revoke a license on a written finding that an applicant or license holder met certain conditions. Deletes text regarding reasons to issue or renew, suspend, or revoke a license. Makes conforming and nonsubstantive changes.

Sec. 12. PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSE. Requires a notice for revocation or suspension to include a copy of the sworn complaint or written request by a court. Prohibits a hearing under this section from being closed to the public. Prohibits a board from suspending or revoking an individual surety's license if the individual is temporarily barred from executing bonds. Prohibits a license from being suspended or revoked without a hearing and presentation and a preponderance of the evidence. Sets forth the method by which the board is authorized to suspend or revoke a license. Deletes text regarding the process of suspension and revocation of a license. Makes conforming and nonsubstantive changes.

Sec. 13. COURT REVIEW. Provides that an original or renewal license approved by the district court after an appeal expires 24 months after the date of the court's final judgment. Authorizes the district court to enjoin a board order during the appeal for good cause, but a board order is not stayed by filing an appeal. Authorizes the district court to award attorney's fees and costs to an applicant or license holder who prevails on appeal. Authorizes an applicant or license holder to file a declaratory judgment action to determine the validity of a board rule. Requires the action to

be filed in certain courts, and authorizes the district court to award attorney's fees and costs to the prevailing party. Authorizes a board to be served by serving its presiding officer. Makes conforming changes.

Sec. 14. New heading: SURRENDER OF PRINCIPAL BY THE SURETY. Requires the clerk of the court to immediately issue a capias warrant that authorizes a peace officer, or private investigator licensed in the state to arrest and return the principal to custody of the sheriff of the county in which the cause is pending. Authorizes the principal to file a written motion with the court requesting a hearing to determine the matter, if the principal considers the reason for surrender to be without reasonable cause. Deletes text regarding certain fees and conditions under which the court is unable to commit a principal during an appeal.

Sec. 15. New heading: TERMINATION AND SETTLEMENT OF LIABILITY ON BONDS. Provides that the surety on an appearance bond in a criminal case is not liable for the bond on dismissal, acquittal, or finding of guilt on a charge made the basis of the bond. Prohibits a court from requiring a surety to continue as a surety during an appeal of a case. Provides that if a case is appealed without the surety's approval, the surety is discharged from liability on the bond. Establishes that this subsection does not deny a principal the right to an appeal bond. Authorizes the attorney for the state to settle the liability of a principal and a surety on the bond for an amount less than that stated in the bond, before final judgment on a forfeiture of an appearance bond. Requires the attorney for the state to set the settlement in a reasonable amount in relation to the fact and circumstances. Deletes text regarding forfeiture of appearance before final judgment, conditions relating after forfeiture to refund for the bondsman, and absolving of liability for the surety upon disposition.

Sec. 16. New heading: ACCEPTANCE OF BONDS. Prohibits a county officer from refusing to accept a bail bond in legally sufficient form that has been executed by a license holder, after perfection of a license. Provides that this license does not apply to a license holder barred from executing a bail bond. Prohibits a county officer from requiring a license holder to be physically present to post a bail bond with that officer. Authorizes certain individuals to require that a license holder designate in writing employees authorized to deliver a bond to the officer and may require that a designated employee display photo identification in a form acceptable to the officer or board. Deletes text regarding a sheriff approving or accepting a bond posted by a licensed bondsman; regarding the effect of default by corporation; and regarding a corporation that may be considered in default.

Sec. 17. ACTS SUBJECT TO PENALTY. Provides that no person is authorized to act as a bail bondsman or advertise as a bail bondsman without holding a license issued by the board, in a county with no board. Sets forth certain persons who are prohibited from accepting or receiving certain transactions from a bondsman. Prohibits a person from soliciting bail bond business in certain specified areas. Prohibits a person from placing in a detention facility an advertisement for a bail bondsman or a device that dispenses a bail bond in certain specified facilities. Deletes text regarding a bondsman keeping a copy of a receipt. Makes conforming and nonsubstantive changes.

SECTION 2. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 3. Emergency clause.