BILL ANALYSIS

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S.B. 1397
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Bail bonds balance the interests of those accused of crimes who do not wish to be locked up while under a presumption of innocence and prosecutors who want assurance the accused will appear in court. Bail bondsmen post bonds as a condition of an individual's release from temporary incarceration. The bondsman charges the accused a bond service fee equal to 10 percent of the face value of the bond. The bondsman retains the service fee since he or she is liable for paying the bonds if a defendant fails to appear in court. Since bail bondsman are themselves bonded by insurance companies, the insurance company is required to pay when the defendant does not show up for court but only if the bondsman is unable to do so. The insurance company is paid a premium equal to one percent of the face amount of the liability. For a long time the practice has been for insurance companies to pay taxes on the amount of premiums they actually receive.

Recently, questions have been raised that could result in a change of the long-standing policy of requiring bail bond insurers to pay taxes based on the amount actually collected. This change in policy could result in a dramatic ten-fold increase of the amount of the tax. This would materially increase the risk assumed by insurance companies and force insurers and bail bond agents to tighten their underwriting criteria—limiting the right to temporary release while preparing for trial, and result in hugely disproportionate amount of tax on commercial bail bonds versus other types of bonds (no tax assessed on property bonds, attorney bonds).

Another issue is that bail bond insurers are now being required to maintain a substantial "unearned premium" reserve. Unearned premium is the portion of a paid insurance premium that is subject to refund when an insured cancels a policy prior to its expiration. With bail bonds, however, the bail bondsman's service fees and the surety premiums due the insurers are fully earned the moment the defendant is temporarily released. No insurance premiums or service fees are ever refunded. Thus, no insurance premiums are ever "unearned." It has recently been proposed that insurance companies hold 50 percent of premiums in reserve. This could potentially result in the insolvency of insurance companies, thus reducing an accused's access to a bail bond and increasing the costs by counties to incarcerate defendants who are unable to secure a bail bond.

S.B. 1397 codifies that bail bond insurers are only taxed on the amount they actually receive and that they are not required to maintain an unearned premium reserve for a bail bond.

As proposed, S.B. 1397 amends current law relating to the regulation of certain surety companies.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 221.002(c), Insurance Code, to provide that premiums or service fees retained by a bail bond surety licensed under Chapter 1704 (Regulation of Bail Bond Sureties), Occupations Code, or by a property and casualty agent in connection with the execution or delivery of a bail bond as defined by Section 1704.001 (Definitions), Occupations Code, are not included in determining an insurer's taxable premium receipts.

SECTION 2. Amends Subchapter E, Chapter 3503, Insurance Code, by adding Sections 3503.202, 3503.203, and 3503.204, as follows:

Sec. 3503.202. UNEARNED PREMIUM RESERVE FOR BAIL BOND NOT REQUIRED. Provides that a surety company is not required to maintain an unearned premium reserve for a bail bond, as defined by Section 1704.001, Occupations Code, executed or delivered by the company.

Sec. 3503.203. DIRECT WRITTEN PREMIUM CALCULATION. Authorizes direct written premium reported by a surety company in a financial statement filed with the Texas Department of Insurance (TDI) to be calculated excluding any premiums or service fees retained by a bail bond surety licensed under Chapter 1704, Occupations Code, or by a property and casualty agent in connection with the execution or delivery of a bail bond as defined by Section 1704.001, Occupations Code.

Sec. 3503.204. DISCLOSURE REQUIREMENTS. Requires a surety company that executes or delivers in this state a bail bond as defined by Section 1704.001, Occupations Code, to disclose in the company's financial statement filed with TDI the aggregate amount of gross premium for bail bond business reported in the company's surety line of business; premium or service fees retained by the bail bond surety or agent; and premium for bail bond business received by the company, net of amounts retained by the bail bond surety or agent.

SECTION 3. Effective date: September 1, 2013.