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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/06

SPONSOR Balderas LAST UPDATED \_\_\_\_\_ HB 715

SHORT TITLE Bail Bondsman and Solicitor Requirements SB \_\_\_\_\_

ANALYST McSherry

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)  
 Administrative Office of the Courts (AOC)  
 Regulation and Licensing Department (RLD)  
 NM Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 715 proposes the following requirements for qualifications and licensing of bail bondsmen and solicitors:

Require licensed bail bondsmen or solicitor shall be at least 21 years of age and not have been found to have violated professional ethical standards (Section 2).

Increase the educational requirements necessary to sit for the solicitor's license examination, and to increase the educational requirement prior to renewal of a bail bondsman's or solicitor's license (Section 3).

Require 30, rather than 10, clock hours of formal classroom education in subjects pertinent to the duties and responsibilities of a solicitor including ethics and all laws and rules related to the bail bond business (Section 3).

Require 120, rather than 30, hours of on-the-job training under the direct supervision of a sponsoring bail bondsman (Section 3).

Require two sets of fingerprints and a birth certificate or proof of citizenship accompany an application for a solicitor's license. Require the superintendent of insurance to arrange for national and state criminal history background checks (Section 4).

Require a person applying for a bail bondsman or solicitor license to obtain, file and maintain a commercial general liability certificate of insurance (Section 5).

Require the superintendent to act upon a license application within a reasonable period after the application has been filed and the results of the national and state criminal background checks have been received (Section 6).

Create and provide for the duties of the "Bail Bondsmen and Solicitors Advisory Committee (Sections 7 and 8).

Prohibit the following practices of a bail bondsman or solicitor:

- An attempt to take a defendant into custody without first providing notification to the local law enforcement agency of the jurisdiction where the defendant is believed to be located.
- Forcibly entering any vehicle, watercraft, dwelling or other structure without first providing such notification.
- Forcibly entering without consent of the occupants who are present at the time of entry.
- Wearing, carrying or displaying a uniform, badge or shield, etc. that implies that the bondsman or solicitor is an employee, officer or agent of the state, municipality or federal government.

Require, immediately after apprehension, notification to the local law enforcement agency of the jurisdiction where the defendant was apprehended of the identity of the defendant, identity of the bondsman or solicitor and where the defendant is being taken to surrender into custody (Section 9).

Raise the amount of an administrative fee imposed in lieu of license suspension, revocation or refusal, except on a second offense, from \$100 to \$1,000, or if the superintendent has found willful misconduct or willful violation by the licensee, the administrative penalty is raised from \$300 to \$3,000 (Section 10).

Classify a violation of the Bail Bondsmen Licensing Law as a misdemeanor. Violators may receive a prison sentence of up to one year, or a fine of up to \$1,000 or both (Section 11).

Provide that a bondsman or solicitor licensed prior to July 1, 2006 must apply for licensure pursuant to the amended law prior to October 31, 2006 to receive a license without meeting the examination or educational requirements of the 2006 amended Act (Section 12).

The Act has an effective date of July 1, 2006.

## **FISCAL IMPLICATIONS**

Fiscal implications would be minimal if this bill were enacted.

## **SIGNIFICANT ISSUES**

The penalty for violations of the Bail Bondsman Licensing Law is imprisonment of up to 1 year, or a fine of up to \$1,000 or both – misdemeanor sentencing. The law previously provided for only a fine of up to \$1,000, upon conviction.

The Attorney General’s Office (AGO) points out that the portion of the law which makes it a misdemeanor to violate the provisions of the Bail Bondsman licensing law raises an issue of specific vs. general statutes:

The criminal statutes of breaking and entering and burglary 30-14-8 and 30-16-3 are felonies and deal with the same type of activity; unauthorized entry into someone’s home or dwelling. The language in Section 59A-51-13 making it a misdemeanor if a bail bondsman enters a home without authority could require the charging agency to charge a misdemeanor instead of a felony because this would be the more specific statute.

A second issue raised by AGO, is that of a potential conflict with Section 31-3-3 (A) Surrender of principal by surety:

This section allows the surety to arrest the accused whenever the surety desires to be discharged from the obligation of its bail bond. This right to arrest has been upheld in cases reviewing the issue. *State v. United Bonding Ins. Co.* 81 N.M. 154 (1970). A right to arrest does not require that consent of the occupants and notification be given to appropriate agencies as is contemplated under 59-51-13 (A) (8). It should be noted however that even law enforcement must first obtain a search warrant before forcibly entering the home of a defendant where they believe he is hiding. In this way it can be said that more restrictions are placed on law enforcement than on a bail bondsman when arresting a defendant. In any event the arrest language in Section 31-3-3 should be reconciled with the new section under 59A-51-13 (A) (8).

## **OTHER SUBSTANTIVE ISSUES**

Currently licensed bail bondsmen under the age of 21 would no longer qualify for licensure under the proposed amendments.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The bill provides tighter regulation of the bail bondsman industry. The consequences of not enacting the bill would be less regulation of the industry.

## **POSSIBLE QUESTIONS**

How many licensed bail bondsmen are under the age of 21?

EM/mt