

**THE SURETY & FIDELITY ASSOCIATION OF AMERICA**

**MEMORANDUM**

**TO:** Government Affairs Advisory Committee

**FROM:** Daniel Wanke

**RE:** Commercial Surety Legislation

**DATE:** December 29, 2014

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Most states expedite their legislative process by permitting bills to be drafted and introduced before the legislative session begins. The pre-filing process varies greatly among the states in terms of the time period bills can be pre-filed, who can pre-file bills and how many bills each legislator may pre-file. In all states except New Jersey and Virginia, the 2015 sessions are the start of a new two-year session and if a state permits pre-filing, they allow it at the start of a new session. The following report compiles and summarizes pre-filed and introduced commercial surety legislation that SFAA is tracking as of December 29, 2014. The text for all pre-filed bills, however, is not always available before the session starts. For additional information on how SFAA is addressing these bills, as necessary, with the AIA, the local surety associations and other interested parties, please visit the Government Relations page of the SFAA website at [www.surety.org](http://www.surety.org).

<b>Jurisdiction</b>	<b>Bill Number(s)</b>	<b>Recent History</b>	<b>Issue</b>	<b>SFAA Summary</b>
FL	HB 61	12/04/2014 Pre-filed for 2015.	School Bond	HB 61 would require charter schools to provide a surety bond or secured escrow account in an amount equal to or greater than the expense projection for the first year of operation, including all salaries, leases, and purchase services.

FL	HB 111	12/16/2014 Pre-filed for 2015.	License Bond— Transitional Living Facilities	HB 111 would require a license for transitional living facilities for brain-injured and spinal-cord-injured persons. The licensee would have to post a surety bond if it acts a payee for a competent client for social security, veteran's, or railroad benefits in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that a licensee receives. The licensee also would have to post a bond to act as the attorney in fact for a client in an amount equal to twice the average monthly income of the client, plus the value of a client's property that the attorney in fact controls. These bonds would be conditioned on the licensee's faithful compliance with the license terms and would be payable to benefit of a client who suffers a financial loss resulting from the misuse or misappropriation of the funds held. The bonds could be cancelled with 30 days notice.
GA	HB 2	11/17/2014 Pre-filed for 2015.	License Bond—Pari- mutuel Horsereading	HB 2 would require racetrack owners and operators to post a surety bond or a letter of credit. The Georgia Racing Commission would determine the bond amount, which would have to be sufficient to cover any indebtedness that the owner incurred to the State.
KY	HB 76	12/09/2014 Pre-filed for 2015.	License Bond— Internet Securities Sales Sites	HB 76 would require persons operating an Internet website for the sale of securities to register and post a minimum \$50,000 surety bond. The bill provides that the bond would secure payment of costs, fines, and damages to any person who is aggrieved by an Internet Web site operator's violation of the law as determined by the Commissioner of the Department of Financial Institutions.
MO	SB 132/SB 12/HB 100/HB 138/HB 146	12/01/2014 Pre-filed for 2015.	License Bond— Commercial Pesticide Applicators	SB 132/SB 12/HB 100/HB 138/HB 146 would increase the amount of the bond or insurance required of commercial pesticide applicators from a minimum of \$25,000 per occurrence to a minimum \$50,000 per occurrence. The bill would eliminate the specification that the bond is for property damage and bodily injury insurance. The bill also would repeal a provision limiting the surety's liability on the bond to its face amount.

MO	SB 65	12/01/2014 Pre-filed for 2015.	Miscellaneous Bond— Educational Assistance Organizations	SB 65 would require educational assistance organizations to post a surety bond if they received more than \$50,000 in scholarship funds through a school choice program that the bill would establish for students from unaccredited school districts. The bond would have to be in an amount equal to the aggregate amount of scholarship funds expected to be received during the school year.
MO	SB 92	12/01/2014 Pre-filed for 2015.	Public Officials	SB 92 would revise the existing law requiring candidates for county collector, treasurer, and collector-treasurer to present a signed affidavit from a surety company indicating that he or she meets the office's statutory bond requirements and that the candidate is eligible to obtain a bond in an amount required by law.
MO	SB 128	12/03/2014 Pre-filed for 2015.	Court Bond	SB 128 would repeal the prevailing wage law. With the elimination of this law, the court bond required in court proceedings also is eliminated.
MO	HB 205/ SB 280/ HB 2076	12/11/2014 Pre-filed for 2015.	Public Officials  Miscellaneous Bond— Lottery Vendors	<p>HB 205/SB 280/HB 2076 would revise the current requirement that the Commissioner of Administration (Commissioner) obtain individual bonds for state compensated employees in the judiciary to instead require a blanket bond or crime insurance policy instead. The bill also provides that the Commissioner could require officers, employees, or agents of the State to post an individual bond if they have responsibility for or access to any of the State's money or property and are not otherwise required to post a bond. The bill also would allow the Commissioner to assume the risk for any or all officers and employees of the State.</p> <p><b>HB 205</b> also would permit best value contract solicitations for lottery vendors. The law requires vendors to furnish performance bonds.</p>
MT	SB 39	12/12/2014 Pre-filed for 2015.	Court Bond— Bad Faith Patent Suits	SB 39 would prohibit bad faith assertions of patent infringement in lawsuits and permit the courts to require the person to post a bond in an amount equal to an estimate of the costs of the suit and the amount to be recovered if the court determined there is a reasonable likelihood that the person who made the assertion has made it in violation of the law. .

MT	HB 66	12/23/2014 Pre-filed for 2015.	Court Bonds-- Fiduciaries	HB 66 would revise the bond requirement for foreign trust companies appointed as a trustee, guardian, or conservator by eliminating all the options to post alternative security in lieu of a surety bond.
MT	SB 98	12/15/2014 Pre-filed for 2015.	License Bond— Mortgage Loan Originators	SB 98 would authorize the surety bond required under existing law for mortgage loan originators and for mortgage brokers and lenders employing loan originators to be filed with the Nationwide Mortgage Licensing Systems and Registry or the Department of Administration (Department).
ND	HB 1065	12/16/2014 Pre-filed for 2015.	Miscellaneous Bond— Autonomous Vehicle Testers	HB 1065 would require a person testing or operating an autonomous vehicle on a state highway to submit proof of insurance or self-insurance to the Department of Transportation, or furnish a cash deposit, surety bond, or other acceptable form of security, in the amount of \$5 million.
ND	SB 2071	12/16/2014 Pre-filed for 2015.	License Bond—Pari- mutuel Horse Racing	SB 2071 would permit licensees for conducting pari-mutuel horse races to furnish a letter of credit in lieu of the bond required under existing law. Current law requires a bond in an amount that will “adequately protect the amount normally due and owing to [the] State in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.”
NJ	SB 2558	12/01/2014 Introduced.	Court Bond— Custody Cases	SB 2558 would permit the courts to require a bond to secure compliance with an order for visitation or parenting time in cases when this designated time has been unreasonably denied.
NJ	AB 4022	12/18/2014 Introduced.	Release of Lien Bond	AB 4022 would require inmates that meet the income threshold to pay for the costs of their incarceration to post a bond or cash in an amount equal to a lien that would be created against their property and income.
NM	SB55	12/16/2014 Pre-filed for 2015.	Miscellaneous Bond— Medicaid Providers	SB 55 would address fraud in the Medicaid program by establishing procedures for suspending payment to Medicaid providers and subcontractors. Any provider seeking to enjoin a final administrative decision of suspension would have to furnish a bond or other surety”
NY	AB 31	12/22/2015 Pre-filed for 2015.	Miscellaneous Bond— Autonomous Vehicle Testers	AB 31 would require entities that perform testing of vehicles with autonomous technology on public roads to submit insurance, surety bond, or proof of self-insurance that is acceptable to the Commissioner of Motor Vehicles the amount of not less than \$5 million.

NY	AB 60	12/22/2014 Pre-filed for 2015.	Miscellaneous Bond— Prescription Drug Wholesalers	AB 60 would require wholesalers of prescription drugs to register and post a “performance or surety bond” of not less than \$100,000 to secure compliance with the proposed law.
NY	AB 96	12/22/2014 Pre-filed for 2015.	Court Bond	AB 96 would require persons who have their license to sell alcoholic beverages revoked for a violation of the law concerning prohibited alcohol sales to post a bond in connection with a hearing concerning the violation. The court would determine the required bond amount.
NY	AB 82	12/22/2014 Pre-filed for 2015.	Court Bond	AB 82 would require a bond in connection with review processes for an occupancy tax in the Village of Tuckahoe. Anyone who disputes the tax or seeks a refund is required to deposit an amount equal to the tax and any penalties due, along with a surety bond from a state-licensed surety for the costs of the proceeding. The petitioner has the option of posting a bond for the amount of the taxes, including interest and penalties, in addition to the costs bond.
NY	SB 190	12/19/2014 Pre-filed for 2015.	License Bond—Debt Collection Agencies	SB 190 would require debt collection agencies to be licensed and post a surety bond, contract of indemnity, or an irrevocable letter of credit. The bond amount would be based on the number of persons the licensee employs in an amount ranging from \$10,000 to \$75,000. The bond would secure the licensee’s compliance with the applicable law and the payment of all costs and penalties. The surety’s total liability would be limited to the face amount of the bond, regardless of the number or nature of claims made against the bond or the number of years the bond remained in force. The bond could be cancelled with 30 days notice to the Secretary of State.
SC	SB 194/HB 3039	12/10/2014 Pre-filed for 2015.	Miscellaneous Bond— Dilapidated Buildings	SB 194/HB 3039 would establish a process for receiverships for dilapidated buildings. Before the receiver could begin work, he or she would be required to include a performance bond or performance bond binder and a detailed time-line for completion of the work in a report that the bill would require for the property.

SC	HB 3211	12/18/2014 Pre-filed for 2015.	Miscellaneous Bond— Financial Intermediary Services	HB 3211 would impose a tax on financial intermediation services. Any foreign person that provides financial intermediation services to residents of South Carolina could be required to provide the Department of Revenue with a “reasonable surety bond.”
SC	HB 3250	12/18/2014 Pre-filed for 2015.	Court Bond	HB 3250 would revise the procedure award of attorney’s fees in appeals cases concerning a certificate of need for a building project for a health facility. Under current law, persons seeking to have the decision to award the certificate, to grant exemption from the certificate, or that the requirement is not applicable reversed must post a bond in an amount equal to 5% of the total cost of the project or \$100,000, whichever is greater. The bond cannot exceed \$1.5 million. If these persons do not prevail, the entire bond is forfeited and the Court of Appeals also may award attorney’s fees. The bill would require both the Administrative Law Court and the Court of Appeals to award attorney’s fees.
TX	HB 148	11/10/2014 Pre-filed for 2015.	Permit Bond— Public Consumption of Alcohol	HB 148 would require a surety bond in connection with obtaining a permit for the public consumption of alcohol. The bond would be forfeited for the first suspension of the permit. The bill would establish procedures for replacing the bond. If a new bond is furnished for the reinstatement of the permit, the bond amount would have to be higher than the previous bond. The bill only would allow the bond to be replaced twice. After three suspensions, the permit would be cancelled.
UT	SB 18	12/15/2014 Pre-filed for 2015.	License Bond— Promoters	SB 18 could repeal the law concerning the Athletic Commission, which requires athletic contest promoters to be licensed and post a bond in the amount of \$10,000 or the amount of the purse, whichever is greater, in connection with holding a contest or a promotion event. The bill may contain a drafting error as other language in the bill indicates an intention to amend the law rather than repeal it entirely. SFAA is monitoring this bill for its actual impact.

UT	SB 24	12/11/2014 Pre-filed for 2015.	License Bond—Money Transmitters	SB 24 would require money transmitters to be licensed and post a minimum \$50,000 surety bond to secure the reimbursement of the State for expenses resulting from an administrative or judicial proceeding against a licensee, concerning the issuance or sale of a payment instrument in the State. The bill would require the money transmitter to maintain the bond for three years after ceasing its operations in the State. The bond could be reduced or eliminate prior to the end of this period to the extent that the amount of the transmitter's payment instruments outstanding in the State are reduced. The bond could be cancelled with 30 days notice.
VA	SB 715	12/04/2014 Pre-filed for 2015.	Miscellaneous Bond— Regional Care Organizations	SB 715 would provide for the delivery of health care services to Medicaid beneficiaries through regional care organizations, which would enter into a contract with the Department under which the organization would assume risk for the cost of the services covered under the contract and would incur a loss if the cost of furnishing the services exceeds the payments under the contract. The bill would require the organization to maintain minimum financial reserves or furnish a performance bond. The restricted reserves would have to be equal to \$250,000 or 25% of the organization's total actual or projected average monthly expenditures, whichever is greater. The capital surplus would have to be equal to \$2.5 million. The bond would have to be in an amount equal to these financial reserves and would guarantee the performance of the provisions of the risk contract.
VA	SB 716	12/05/2014 Pre-filed for 2015.	License Bond— Casinos	SB 716 would establish the Virginia Casino Gaming Commission (Commission) and would require persons or entities operating a casino to obtain a license and provide a surety bond from an acceptable surety. The Commission would determine the bond amount, which would have to be sufficient to cover any indebtedness that the licensee incurred to the State.
VA	HB 1310	11/11/2014 Pre-filed for 2015.	Tax Bond	HB 1310 would authorize any county, city, or town to require persons subject to a tax on nicotine vapor products to register and post a bond in an amount not to exceed 1.5 times the registrant's average monthly tax liability. A surety company authorized to do business in the Commonwealth would have to issue the bond.

WA	SB 5007	12/10/2014 Pre-filed for 2015.	Miscellaneous Bond— Employment Agencies	SB 5007 would repeal the law regulating employment agencies, which requires an employment agency to post a \$2,000 bond or deposit.
WY	SB 4	12/01/2014 Pre-filed for 2015.	Public Officials	SB 4 would establish the Dry Bean Commission (Commission) and require any person that the Commission authorizes to receive or disburse its funds to post a surety bond in an amount the Commission determines to be sufficient.
WY	HD 47	11/10/2014 Pre-filed for 2015.	License Bond—Fuel Businesses	HD 47 would require alternative fuel suppliers, refiners, distributors, terminal operators, importers and exporters of alternative fuel used to propel a motor vehicle to be licensed. The bill would authorize the Department of Transportation (Department) to require a bond or other security if the licensee has a tax liability. The bond would have to be for \$50,000 or equal to the licensee's tax liability for six months, whichever is greater. The bond could be waived if the licensee has a "good filing record" for the preceding three years. If a licensee whose bond was waived commits a violation, the bond would again be required. The bond would have to guarantee payment of delinquent taxes, penalties and interest due and the return of the license. The bond would be conditioned on the licensee not practicing any fraud, making any fraudulent representation, or violating any applicable law concerning its business.