



The Surety & Fidelity  
Association of America

**2008 ANNUAL**

**STATE LEGISLATIVE REPORT**

**ON**

**COMMERCIAL SURETY**

***FINAL EDITION***

**The Surety & Fidelity Association of America**  
**1101 Connecticut Avenue, NW, Suite 800**  
**Washington, DC 20036**  
**Telephone: (202) 463-0600 – Fax: (202) 463-0606**

*Copyright 2008*

## 2008 In Review

Forty-four states convened in regular session in 2008. Some of the states had a shorter session as it is the second year in a two-year cycle, as well as a presidential election year. For **New Jersey** and **Virginia**, 2008 was the first year of a new two-year session. **Arkansas, Montana, North Dakota, Nevada, Oregon** and **Texas** did not meet in 2008.

### More States Look at License Bonds for Contractors

There are increasing opportunities to achieve a statewide contractors' license bond due to increased consumer complaints about contractors and state attorney general involvement in the issue. A number of bills were introduced this year, but because of the short sessions in some states, the bills did not move to enactment in time.

SFAA historically has supported a statewide contractors' license bond so long as the existing local license bond requirements are not preempted. The GAAC generally agreed that this is an issue that must be addressed going forward on a state by state basis. There are not many local license bond requirements in many states such that a single statewide license bond would be positive for the surety business. In addition, some of the local license bonds are discretionary with the contracting entity or are otherwise being repealed. A single statewide bond also allows the bond to be filed with the Secretary of State, while in some cases, the licenses still can be obtained locally, preserving a source of local revenue.

New or amended license bond requirements were enacted in **Iowa, New Mexico** and **North Carolina** this year. **Iowa** HB 2646 requires fire sprinkler installers and maintenance workers to be licensed and obtain public liability insurance and a surety bond in an amount that the Department of Public Safety will determine by rule. **New Mexico** HB 199 repealed its existing contractors' license bond under which the bond amounts were small and based on the size of projects done, and replaced it with a \$10,000 bond from a corporate surety licensed in the State. **North Carolina** HB 2353/SB 1795 would create the Irrigation Contractors' Licensing Board (Board). The bill would require a license bond in the amount of \$10,000. Surety bonds or letters of credit would be accepted and bonds would have to be issued by companies licensed in the State.

License bond legislation failed in the following states: **Arizona, Florida, Illinois, Indiana, Minnesota, Missouri, New York, Ohio** and **Oklahoma**.

### Numerous Bills Address Bonding for Mortgage Brokers and Lenders

In 2008, there has been a significant increase in mortgage broker and lender bond legislation, most of which is to increase the bond amount or otherwise impose tighter regulation on mortgage brokers and lenders. Some of this legislation is passing, but the states also seem to be willing to wait to see what Congress enacted this year to both stimulate the economy in general and to address problems in the housing market in particular. Some states wanted to wait and see if there was a significant decrease in the demand for renewal of these license bonds before making any changes to the bond or other regulatory requirements. In the meltdown of the subprime mortgage market, many brokers have been shut down or gotten out of the business.

Several bills have been enacted this year that either enact a new bond requirement or raise an existing bond amount. **Connecticut, Iowa and Maryland** increased the bond amount. **North Carolina** required mortgage servicers and **Pennsylvania** required correspondent lenders to post the bond required of mortgage brokers.

A new license bond requirement for mortgage brokers and bankers failed to pass in **Alabama**, and increases in the bond amounts failed to pass in **Hawaii, Missouri, Oregon and South Carolina**.

SFAA also saw legislation this year that would have required the mortgage broker license bond to respond to unpaid state examination expenses and other fees, fines and penalties.

### **New License Bond Opportunities Arise in the Current Economy**

With the credit crunch and problems in the real estate and mortgage lending markets, new types of financial service providers have emerged and states are beginning to respond with laws that require licensing and bonding of credit counseling, debt management services, foreclosure consultants, settlement services and debt collection agents and agencies. Much of this legislation is being introduced for the first time in some of the states and it is not being enacted this year. It may take a year or two for some of these new license bills to move to enactment.

### **Some Motor Vehicle Bond Requirements are Amended**

Continuing a trend from last year, SFAA has seen bills to either increase the amount of the motor vehicle bond or extend its application to new types of vehicles. **Colorado, Idaho and Pennsylvania** expanded the scope of their laws to new vehicles, and **Tennessee and West Virginia** increased their bond amount this year.

SFAA and AIA worked this year to defeat **California** AB 1939 which would have increased the license bond amount for motor vehicle dealers and remanufacturers from \$50,000 to \$100,000.

### **States Enacted Other New License Bond Opportunities**

**Kansas** now requires home inspectors to register with the Home Inspectors Registration Board (Board) and submit proof of a fidelity bond in an amount of not less than \$10,000 to cover dishonesty. The new law also requires a separate submission of proof of financial responsibility, which could be a surety bond in an amount not less than \$10,000. A bill in **Georgia** did not pass. It would have required home inspectors to be licensed and to obtain liability insurance in an amount to be determined by regulation, post a surety bond or maintain net assets of \$100,000.

### **Alternative Market for Public Official Bonds in New York is Defeated**

**New York** SB 7174 would have permitted the New York Mutual Insurance Reciprocal (NYMIR) to write public official bonds. SFAA opposed the legislation. SFAA questioned how NYMIR would perform the prequalification function that makes surety bonding unique among insurance products. MYMIR has no underwriting criteria and expertise to review applicants for a public official bond. It also is questionable whether NYMIR can reject an application from one of its subscribers for a public official bond as the whole purpose of NYMIR is to write insurance for its subscribers. SB 7174 seemed to contemplate that NYMIR will fill a current void and write public official bonds for those who cannot get them in the current market. Given the nature of a surety bond, however, that is exactly the opposite of what NYMIR should be permitted to do. SFAA also argued that allowing NYMIR to write public official bonds could mean that

taxpayers in municipalities will pay twice for these bonds—once for the premium and then again for the claims. To subvert the purpose of the public official bond and to provide bonds to unqualified subscribers of NYMIR is equally economically unworkable and a disservice to the public that the bond is intended to protect.

### **The Uniform Trust Act is Introduced in 2008**

The Uniform Trust Code was introduced in three states this year. The bills provided that trustees only would be required to furnish a bond to secure the performance of their duties when the court decides that it is necessary to protect the interests of the beneficiaries. A bond also could be required if it is in the terms of the trust and the court has not dispensed with this requirement. The court also would have the authority to determine the amount of the bond, the terms of the trustee's liability, and may modify or terminate the bond at any time. Trust companies, title insurance companies, banks, national banking associations and savings and loan associations would not need to give a bond, even if terms of the trust require one. If the trustee resigns, any liability of the trustee or of the sureties on the bond for the acts and omissions of the trustee would not be discharged or affected by the trustee's resignation. In 2008, **Arizona** HB 2806 was enacted, and was defeated in **Connecticut** HB 508 and **Oklahoma** SB1825.

### **Courts Given More Discretion on Fiduciary Bonds**

**Rhode Island** HB 7985/SB 2743/SB 2755 now permits the court to waive the surety bond for the guardian of an estate regardless of the value of the ward's estate. Currently, the law requires a guardian's bond if the value of the estate exceeds \$10,000.

**Michigan** HB 5188 was defeated. It would have changed the bonding requirements for conservators of a trust for an estate of a deceased person. Current law provides that a court may require the conservator to furnish a bond with the sureties that the court specifies. In lieu of any sureties, the law permits securities to be pledged or a mortgage on land. The bill would have authorized the court to require a bond if it determined that the value of cash and property, which is readily convertible into cash in the estate and is in the conservator's control, exceeds the limit for administering a decedent's estate under existing law. The bond could be waived if: the estate contains no property readily convertible to cash and if cash is held in a restricted account with a financial institution; the conservator has been granted trust powers under the State's banking code; the court determines that requiring a bond would impose a financial hardship on the estate; or the court states on the record the reasons why a bond is not necessary.

### **Some States Re-examine Workers Compensation Self-Insurance Bonds**

In **New York**, the Workers Compensation Board (WCB) released a report this year on alternate funding models for workers compensation self-insurance pursuant to a directive from a 2007 law. Currently, New York requires approved self-insurers to provide security for their liabilities, which can be met with a surety bond. The report recommends moving from individual security deposits to a guarantee fund, eliminating bonding. SFAA worked with AIA to present the surety perspective. SB 8102 was introduced this year to implement the report's recommendations, however, it would have impacted group-self insurers only. SFAA saw this as a positive development since it was limited and retained the option of self-insuring individually. SB 8102 failed to move and SB 8790 was introduced and enacted at the 11<sup>th</sup> hour of the session. SB 8790 imposes stricter financial regulations on group self-insurers for workers' compensation plans and requires them to hire an administrator that has to post a bond in the amount of \$500,000 for each

group administered. The AIA local counsel has told SFAA that the report's proposal for self-insurance plans may be dealt with in 2009.

Most recently, SFAA received a report from the Washington Self-Insurers Association (WSIA) on an Alternative Collateral Program (ACP) that the MMC Securities Corp. presented to it, whereby all surety obligations would be replaced with a fund comprised of assessments charged to the self-insurers. WSIA contended that California's ACP has been successful and requested financial information from its members to evaluate the feasibility of such a move. The ACP was presented to WSIA members as a cost-savings initiative. SFAA currently is addressing this issue with its Commercial Surety Advisory Committee.

### **Bad Faith Defeated Again in Rhode Island**

The bad faith legislation in **Rhode Island** died when the legislature adjourned. SB 2323 and SB 2229 would have allowed any obligee, principal or claimant that is under any fiduciary, performance or payment bond to file a claim against the surety on the bond for wrongfully, and in bad faith, refusing to pay or settle a claim. The bills would have allowed claimants to seek both compensatory and punitive damages, as well as reasonable attorneys' fees and costs of suit. SB 2323 is identical to the bill that was defeated last year. SB 2229 would apply to a fiduciary bond, as well as payment and performance bonds. HB 7766 and HB 7981 are the House counterparts to the Senate legislation. The bills were heard in committee in both chambers, and SFAA and AIA testified, but the bills did not get out of committee. In the past two sessions, the same legislation passed one house of the legislature.

### **Other New Laws of General Interest to SFAA Members**

**Iowa** enacted HB 2555 which subjects surety and guaranty bond filings to the 30 day deemer provisions in the Iowa rating law. Under prior law, rate filings for inland marine, and for surety and guaranty bonds not covered by a previous filing, were exempt from the 30 day deemer period applicable to all other rate filings. Inland marine and surety filings became effective when filed under prior law. The new law removes this exemption so that surety and guaranty bond filings now are subject to the 30 day waiting period/deemer before they become effective. However, even though prior law provided that a surety filing was effective upon filing, the Commissioner also had the authority to disapprove the filing within 30 days of its submission. The new law eliminated the disapproval period when it subjected surety and guaranty bond filings to the deemer period. The new law also creates a consumer advocate in the Insurance Department. HB 2555 became effective upon enactment.

**New Hampshire** enacted SB 378 which authorizes the State Supreme Court to establish a business and commercial dispute docket in the superior court. Civil claims related to surety bonds will be assigned to this docket. The new law became effective upon enactment.

# 2008 ANNUAL STATE LEGISLATIVE REPORT ON COMMERCIAL SURETY

## INTRODUCTION

Because of the diversity of the business of its members, SFAA tracks all state and federal surety and fidelity bond legislation. In reporting legislative developments, however, SFAA's reports are based on the three major lines of business: contract surety, commercial surety and fidelity bonds. This report contains the 2008 enactments on commercial surety. Interested SFAA members can access the reports on contract surety and fidelity bonds on the SFAA website.

This SFAA Annual State Legislative Report on Commercial Surety contains two major parts: one section contains a summary of the 2008 state legislation on SFAA's priority issues for commercial surety and the second section is a state-by-state compilation of the 2008 state enactments relating to commercial surety.

### Summary of State Legislative Activity on Key Commercial Surety Issues

#### LICENSE BONDS

##### Contractors

**--Enactments.** **Iowa** HB 2646 requires fire sprinkler installers and maintenance workers to be licensed and obtain public liability insurance and a surety bond in an amount that the Department of Public Safety will determine by rule. **New Mexico** HB 199 repeals the existing contractors' license bond under which the bond amounts are small and based on the size of projects done, and replaces it with a \$10,000 bond from a corporate surety licensed in the State. Payments from the bond can be used only to cure code violations of a licensee. Claims against the bond must be made within two years following the final inspection or within two years of issue of a certificate of occupancy, whichever is earlier. The total aggregate liability of the surety shall not exceed the face amount of the bond. There is a 30 day cancellation provision. **North Carolina** HB 2353/SB 1795 creates the Irrigation Contractors' Licensing Board (Board), and requires a license bond in the amount of \$10,000. Surety bonds or letters of credit would be accepted and bonds would have to be issued by companies licensed in the State. The bond would be conditioned on compliance and would be open to direct actions from persons claiming injuries resulting from a violation of the proposed law.

**--Carryover.** **New Jersey** AB 1355 would require all construction trade contractors to post a \$3,000 license bond. The bond would be conditioned on faithful performance under the law. The bill would prohibit municipalities from requiring any similar bond from any construction contractor licensed under this bill. The bill further provides that any contract entered into by an unlicensed contractor would be unenforceable. This provision would not affect the obligation of a surety that had provided a bond to an unlicensed contractor, nor would it affect the rights of other parties to enforce contract, lien, or bond remedies. **New Jersey** AB 2197 would require home improvement contractors to post a bond in the amount of \$50,000. The bond would have to be payable to the State for the use or benefit of any consumer who entered into a home improvement contract and incurred damages or suffered any loss resulting from any of the

contractor's violations of the law. The bill provides that both consumers and the Director of the Division of Consumer Affairs would be able to make claims against the bond.

**--Defeated.** As originally drafted, **Arizona** HB 2030 would have increased the maximum amounts of the existing license bond required for general commercial building contractors, specialty commercial contractors and residential contractors. **Florida** HB 1005/SB 2194 would have required construction contractors to obtain a surety bond in the amount of \$75,000 in order to obtain a certificate or to register with the State. The bill would permit direct actions on the bond. **Illinois** SB 2760 would have required electricians and electrical contractors to be licensed and to post a bond in an amount that the Department of Labor would determine. This license bond would be required in lieu of license bonds from other political subdivisions. **Indiana** HB 1325 would have increased from \$5,000 to \$30,000 the amount of a unified license bond for contractors who perform work in counties where such a bond is required. **Iowa** HB 2209 would have revised the amount of the license bond for plumbing and mechanical system contractors. **Iowa** SB 317 would have required a home improvement contractor to post a \$75,000 surety bond prior to accepting a contract. The bond would have had to provide for payment to any person damaged by the contractor's breach of the contract or a violation of existing law. **Massachusetts** SB 220 would have required irrigation contractors to obtain a business permit and to provide proof of liability and workers' compensation insurance policies, a surety bond and letter of credit. **Minnesota** SB 2926 would have subjected restricted master plumber licensees to the bond requirement for master plumbers, which is \$25,000. **Missouri** HB 2452 would have required contractors to be licensed and to post a surety bond. The amount of the bond would have been based on the classification of the contractor and the volume of business done annually. **New York** AB 7744/SB 5410 would have required specialty contractors to post a \$5,000 license bond. **Ohio** SB 275 would have required home improvement contractors to enter into a written contract with the owner of the home if the amount of the contract exceeds \$100,000. The bill would have required the terms of the contract to contain a notice as to whether the contractor has a performance bond or insurance that covers losses due to defects or a breach of the contract's terms. As originally drafted, **Oklahoma** HB 2773 would have required all contractors, including subcontractors, to post a surety bond in the amount of \$5,000 prior to commencing work on any contract in the State. The bill was amended, however, to require \$1 million in liability insurance.

### **Manufacturers and Installers of Manufactured Homes**

**--Enactments.** **Colorado** HB 1260 changes the amount of the surety bond required in connection with the issuance of the certificate of title for a manufactured home to indemnify anyone who might suffer damages or a loss because the certificate was issued. Prior law required the bond to be in the amount that the Executive Director of the Department of Revenue required. The new law requires the bond amount to be equal to twice the value of the manufactured home as listed in the assessor's records. **Colorado** HB 1319 repeals the requirement that installers and inspectors of manufactured homes must post a \$10,000 bond. After January 1, 2009, license applicants will be required to have liability insurance. **Mississippi** HB 1388 authorizes the Insurance Commissioner to adopt regulations to establish bonding and/or insurance requirements in connection with the licensure of manufacturers, distributors, retailers, transporters and installers of factory-built homes.

**--Dead for 2008.** **Alabama** HB 126/SB 59 would have changed a provision in existing law that permits the Department of Revenue (Department), if not satisfied as to the ownership of a manufactured home, to withhold the certificate of title unless a bond or cash deposit is posted in

an amount equal to 1.5 times the value of the vehicle. The bill would have changed the bond amount based on the age of the model of the manufactured home. For home models less than ten years old, the bond would have had to be in the amount of \$50,000. For home models that are ten years or older, the bond would have to be in the amount of \$25,000. The Alabama Manufactured Housing Commission (Commission) also currently has regulations in place that require dealers to post a \$50,000 bond if the dealer has more than three locations. The bill would have required all dealers to post a surety bond in an amount that the Department would have determined, but not be less than \$50,000. HB 16a/SB 16a and SB 115a were identical measures considered during the special session and failed to pass. **New Hampshire** HB 1459 would have required dealers and installers of manufactured buildings to be licensed and post a letter of credit, a products liability policy or a surety bond. The amount would have been \$300,000 for installers and \$1 million for dealers. The bill has been referred for interim study. **North Carolina** SB 1159 would have required those who will build modular homes, who are not licensed as manufactured home builders or general contractors, to be licensed as set-up contractors and to post a \$5,000 surety bond. The bond would have had to cover installation of the home, and the bond would have been in addition to the license bond required under existing law.

**Home Inspectors**

**--Enactments.** **Kansas** HB 2315 requires home inspectors to register with the Home Inspectors Registration Board (Board) and submit proof of a fidelity bond in an amount of not less than \$10,000 to cover dishonesty. The new law also requires a separate submission of proof of financial responsibility, which could be in the form of a surety bond. The surety bond must not be in an amount less than \$10,000, and could not be terminated without 30 days prior written notice to the Board. Other types of acceptable proof of financial responsibility would include an errors and omissions insurance policy, an irrevocable letter of credit not less than \$10,000, or an escrow account with a minimum balance of \$10,000.

**--Defeated.** **Georgia** SB 485 would have required home inspectors to be licensed and to obtain liability insurance in an amount to be determined by regulation, post a surety bond or maintain net assets of \$100,000.

**Mortgage Brokers and Lenders**

**--Enactments.** **Connecticut** HB 5577 increases the amount of the mortgage broker bond from \$40,000 to \$80,000. **District of Columbia** Bill 1020 imposes a net worth requirement on mortgage brokers in addition to the license bond requirement under current law. The new law also permits the broker to pay into a recovery fund as the Commissioner of Insurance prescribes in lieu of meeting the net worth and bonding requirements. Current law bases the amount of the bond on the loan volume of the broker with a base amount of \$12,500 and a maximum of \$50,000. **Idaho** HB 450 eliminates the \$10,000 license bond for loan originators. **Iowa** HB 2556 increases the bond amount from \$50,000 to \$100,000 for mortgage banker and brokers. The new law also would require industrial loan companies to post a \$25,000 bond. **Maryland** HB 363/SB 270 increases the amount of the license bond required for mortgage lenders as follows:

Loan Volume	Current Bond Requirement	Increased Amount
\$3 million or less	\$25,000	\$ 50,000
\$3 to 10 million	\$50,000	\$100,000
\$10 million or more	\$75,000	\$150,000

**North Carolina** HB 2463 subjects mortgage servicers to the same licensing and bonding requirements as mortgage lenders. **Pennsylvania** HB 2179 subjects correspondent lenders to the license bond requirements for mortgage brokers. **Wyoming** SB 44 amends the forfeiture requirements for the surety bond required under existing law for mortgage brokers and lenders. Prior law provided that the bond must be forfeited to persons suffering damages as a result of the mortgage broker's or lender's violation of applicable federal or state laws or regulations relating to mortgage brokering or mortgage lending. The new law provides that the bond would have to be forfeited in an amount that would be sufficient to satisfy the violation or the entire penal sum of the bond if the violation exceeded that amount.

In related legislation, **Kentucky** HB 552 changes the license bond requirements for mortgage brokers and mortgage lenders. The new law permits the Office of Financial Institutions to recover expenses, fines and fees levied, and to make recovery for borrowers and consumers suffering losses or damages as a result of the licensee's failure to comply with the laws. Existing law already permits a direct action against the bond. **West Virginia** SB 292 requires the current bond for mortgage brokers and lenders to be available for a claim from the Commissioner of Banking (Commissioner) for an unpaid civil administrative penalty or an unpaid examination invoice. The new law provides, however, that consumer claims for restitution would have priority over the Commissioner's claims.

*--Defeated.* **Alabama** HB 643 would have required a \$50,000 bond from mortgage brokers, a \$150,000 bond from mortgage lenders, a \$75,000 bond from mortgage servicers and a \$25,000 bond from mortgage processors. The bill was favorably reported out of committee, but did not pass before the session adjourned. **Connecticut** SB 21 would have subjected correspondent lenders to the mortgage broker license bond requirement and increased the license bond amount from \$40,000 to \$60,000. The bill also would have required the bond to respond to any unpaid costs of examination of the licensee. **Connecticut** SB 423 would have changed the current license bond requirement for non-depository first mortgage lenders, brokers and originators. Under current law, the bond amount is \$40,000. The bill would have required a bond amount equal to 30% of the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association. **Indiana** HB 1211 would have required those regularly engaged as a creditor in mortgage transactions to post a bond in the amount of at least \$300,000, which would have to remain in effect for at least two years after the creditor ceases operations in Indiana. The bond would be available for damages and penalties to a consumer harmed by a violation of the law. The bond also would have to be available for funding the regulatory costs that the Department of Financial Institutions incurs in remedying violations.

**Hawaii** HB 2408 would have changed the amount of the license bond required for mortgage brokers. Existing law requires a \$15,000 license bond. The bill would have based the bond amount on the number of mortgage brokers and loan originators that a mortgage broker firm employs. For a firm employing one to five mortgage brokers and loan originators, the bond would have to be in the amount of \$25,000; for six to ten mortgage brokers and employees, \$50,000; and for eleven or more mortgage brokers and loan originators, \$75,000.

**Massachusetts** HB 5167 would have required mortgage originators to post a license bond in an amount based on the dollar amount of loans that the licensee originated. **Missouri** HB 2586 would have increased the bond amount from \$20,000 to \$50,000. **New Mexico** SB 445 would have required mortgage loan originators operating from within the State to post a \$20,000 surety

bond. For licensees originating loans from outside of the State, the bond would have to be in the amount of \$50,000. The bill would have permitted direct actions on the bond from anyone having a cause of action. **Oregon** SB 1090a would have increased the amount of the license bond required of mortgage brokers and mortgage bankers. Currently, the amount of the bond required is a minimum of \$25,000, which can be increased up to \$50,000, based on the number of offices, in increments of \$5,000 per office. The bill also would have increased the maximum amount of the bond to \$100,000, and would eliminate the minimum amount of the bond required, while maintaining the \$5,000 per office increase mechanism. **South Carolina** SB 1090 would have increased the amount of the license bond required of mortgage brokers from \$10,000 to \$25,000.

### **Credit Counseling/Debt Management Services**

**--Enactments.** **Minnesota** SB 2930 does not directly change the license bond requirement for debt management providers. The new law gives the Commissioner the authority to temporarily waive any licensing requirement for good cause shown, and bonding is required for licensing. **Pennsylvania** HB 2294 requires debt management services providers to be licensed and bonded. Right before the bill was enacted, it was amended so that the bond amount is “greater than the total amount of Pennsylvania consumer funds that the licensee will hold directly or in trust at any time.” As originally drafted, the bill would have set the bond amount at \$100,000.

**--Dead for 2008.** **California** AB 2611 would have required debt management service providers and credit counselors to post a \$25,000 surety bond. In lieu of a surety bond, the bill would have permitted such providers to deposit \$25,000 in the form of cash, a certificate of deposit, or government bonds. The bill would have permitted any person suffering any loss or damage that to make a claim against the bond. **Connecticut** SB 183 would have changed the \$40,000 bond currently required of debt adjusters. The bill would have based the bond amount on the highest average daily balance of payments received from Connecticut debtors in the preceding year. The bond would have been capped at \$1 million. **Maryland** HB 1223 would have required providers of debt settlement services to post the bond required of debt management service providers, which is a license bond in the amount of at least \$10,000 and not more than \$1 million. **Massachusetts** HB 334/SB 206 would have required credit counseling services to post a license bond in the amount of \$40,000 or twice the amount of the highest total payments that the license applicant received from Massachusetts debtors in connection with his or her debt adjustment activity in any month during the preceding twelve months ending March 31st of each year, whichever was greater. In lieu of the bond, the applicant could have posted additional bonds or insurance policies, provided that he or she had first posted a surety bond in the amount of \$40,000. SB 2335 was similar, but it would have required consumer credit counselors to post a surety bond in the amount of \$250,000, or in the amount that the Commissioner of the Division of Banks established. **New Mexico** SB 152 would have enacted the Uniform Debt Management Services Act (Act) of the National Conference of Commissioners of Uniform State Law (NCCUSL), which requires a debt-management service provider (provider) to register and file a surety bond in the amount of \$50,000. **Wisconsin** AB 218 would have enacted the NCSL Uniform Debt Management Act. The bill contained a \$50,000 license bond. **Wisconsin** AB 902 would have required debt-settlement services providers to be licensed and to post a \$20,000 surety bond. Based on the financial condition of the licensee, the bond amount could have been increased.

### **Debt Collection Services**

**--Enactments.** **Idaho** HB 451 changes the regulatory structure for collection agencies and debt and credit counseling services so that only one bond would be needed rather than separate licenses and bonds for each function.

**--Defeated.** **Connecticut** SB 426 would have increased the amount of the license bond for consumer collection agencies from \$5,000 to \$50,000. **Rhode Island** HB 7112 would have eliminated the registration requirements for debt collectors and replaced them with licensing and bonding requirements. Debt collectors would have been required to post a \$150,000 surety bond. **South Carolina** HB 4612 would have required debt collection agencies to post a license bond based on the total value of South Carolina accounts in possession in the previous year. The bond amounts would have ranged from \$15,000 to \$150,000.

### **Foreclosure Consultants**

**--Enactments.** California AB 180 requires foreclosure consultants to register with the Department of Justice and to post a surety bond in the amount of \$100,000. The bond has to be in favor of the State for the benefit of the homeowner in the event of the consultant's violation of the new law or any provision in existing law.

**--Carryover.** **New Jersey** AB 281 would require foreclosure consultants to post a surety bond in the amount that the Director of the Division of Consumer Affairs would prescribe by regulations.

### **Real Estate Settlement Agents**

**--Enactments.** **Virginia** SB 149 increases the amount of the license bond required of real estate settlement agents from not less than \$100,000 to \$200,000.

**--Dead for 2008.** **North Carolina** SB 764 would have regulated real estate settlement agents that deal in the completion of consumer real estate transactions. The settlement agent would have been allowed to disburse the funds for the closing costs from its trust or escrow account. Had the funds been distributed in the form of a check that was drawn on the account of a mortgage banker, the banker would have had to have posted a surety bond in the amount of at least \$300,000. The bond would have run to the State for the benefit of settlement agents with a claim against the banker for a dishonored check.

### **Lenders and other Financial Services Entities**

**--Enactments.** **New Hampshire** SB 465 would have reduced the maximum amount of the bond for trust companies. For a family fiduciary services company, the maximum amount of the bond would have been \$250,000, and the bond for all other non-depository companies would have been limited to \$500,000. The bonding provisions were removed from the bill and it was passed and sent to the Governor. **Ohio** HB 565 requires short-term lenders to be licensed and to post a surety bond from a surety licensed in the State. The bond would have to be in the amount of at least \$100,000, unless the license applicant is a non-profit corporation, then the bond would have to be in the amount of \$50,000. The bond would run concurrently with the license period.

**--Dead for 2008.** **Ohio** HB 156 would have required providers of refund anticipation loans and refund anticipation check transactions to register and post a surety bond from a bonding or insurance company licensed in the State in the amount of \$100,000 for each business location. The bond would have had to remain in effect for at least five years after the registrant ceased

operations in the State and would have been for the exclusive benefit of the consumer.

**Pennsylvania** SB 335 would have regulated tax refund anticipation loan and check providers, requiring a license bond in the penal sum of \$100,000, executed by a surety company licensed in the Commonwealth.

### **Money Transmitters and Check Sellers/Cashers**

**--Enactments.** **Florida** SB 2158 increases the amount of the license bond from money transmitters. Currently, the Financial Service Commission (Commission) sets the amount of the bond up to \$250,000. Under the bill, the bond cannot be less than \$50,000, and the Commission could increase the bond amount up to \$2 million.

**--Defeated.** **Michigan** SB 169 would have required those offering check cashing services to post a license bond in the amount of \$5,000 per location. The bond would have had to be issued by a bonding company or insurance company licensed in the State, and in a form satisfactory to the Commissioner of the Office of Financial and Insurance Services. The bond would have served to secure the performance of the applicant's obligations with respect to receiving money in connection with cashing checks. Of note, the submission of financial statements demonstrating at least \$5,000 in working capital and \$25,000 in cash also would have been required.

**Mississippi** SB 2925 would have significantly changed the amount of the license bond required for sellers of checks. Existing law requires a surety bond of at least \$25,000 and an additional \$15,000 for each additional business location. The bond amount is capped at \$250,000. SB 2925 would have based the bond amount on the amount of outstanding checks. The bond would have been in an amount equal to 1.5 times the amount of such checks. The bond still would have been a minimum of \$25,000, but the cap on the bond would have increased to \$1 million.

### **Motor Vehicle Bonds**

**--Enactments.** **Colorado** SB 144 requires repairs shops to obtain a bond for twice the amount of the retail value of a vehicle when seeking title for an abandoned motor vehicle. **Idaho** HB 365 requires dealers of motor-driven cycles to comply with the existing \$20,000 bond requirement for vehicle dealers. **Idaho** HB 440 applies existing law to dealers of truck campers, which requires a \$10,000 license bond. New Jersey SB 521 retains the \$500,000 license bond for permits for off-site sales to a licensed used motor vehicle dealer, but decreases to amount of the bond to \$10,000 for permits for off-site sales to recreational vehicle dealers. **Pennsylvania** SB 1019 requires recreational vehicle dealers to post a \$30,000 license bond. The bond would serve as security for any claim of an agency of the Commonwealth for moneys due, including but not limited to, unpaid taxes, fees, licenses, payment of a criminal penalty or fine after conviction, payment of a civil fine or penalty or monetary amount after the entry of judgment. **Tennessee** HB 2809 increases the amount of the surety bond from \$25,000 to \$50,000 for a motor vehicle dealer license. **West Virginia** HB 4364 increases the motor vehicle dealer license bond from \$10,000 to \$25,000.

**--Defeated.** **Alabama** HB 94 would have permitted dealers to issue the newly required titles for off-road vehicles provided that they posted a bond of at least \$5,000. **California** AB 1939 would have increased the amount of the license bond for motor vehicle dealers from \$50,000 to \$100,000. **South Carolina** SB 1344 would have required motor vehicle repair shops to demonstrate licensure with a local government agency and bonding in connection with an application for license plates for vehicles that will be test driven. The bond amount is \$25,000.

**Virginia** SB 565 would have required motor vehicle equity lenders (title loans) to be licensed and to post a \$50,000 bond. The bill would permit direct actions on the bond from any persons damaged by the licensee's noncompliance with the applicable laws and written agreements.

**West Virginia** HB 2028 would increase from \$10,000 to \$50,000 the license bond that is required for new motor vehicle dealers, used motor vehicle dealers, house trailer dealers, trailer dealers, recreational vehicle dealers, motorcycle dealers, used parts dealers, wreckers and dismantlers. For those licensed as a service business, an automobile auction business, and a daily passenger rental car business, the amount of the license bond would be increased from \$25,000 to \$50,000.

### **Public Adjusters**

States are beginning to introduce the new public adjuster model legislation of the National Association of Insurance Commissioners (NAIC), which contains a \$20,000 license bond.

--**Enactments.** **Florida** SB 2012 subjects public adjuster apprentices to the existing \$50,000 license bond for public adjusters. **Idaho** SB 1397 enacts the NAIC model legislation with a \$20,000 license bond.

--**Dead for 2008.** **Illinois** HB 5489 would have amended the existing public adjuster law to incorporate the new NAIC model provisions. The bill would have increased the existing \$5,000 license bond to \$20,000.

### **Exchange Facilitators**

--**Enactments.** **California** SB 1007 requires exchange facilitators, which are those who are engaged in the facilitation of like-kind exchanges of property pursuant to federal tax law, to be licensed and to post one of the following: a fidelity bond or bonds in an amount not less than \$1 million from an insurer licensed in the State, or cash, securities, or an irrevocable letter of credit for the same amount.

--**Dead for 2008.** **Colorado** HB 1237 and **Washington** HB 2939/SB 6845, which were similar to the new California law, died this year.

### **Other New License Bonds**

--**Enactments.** **Colorado** SB 153 would require the State Board of Health to adopt rules requiring home health care providers to obtain professional liability insurance or a surety bond. **Rhode Island** HB 7113/SB 2067 eliminates the \$10,000 license bond for travel agencies as part of a bill that repeals the licensing and other regulation of travel agents. **Tennessee** SB 4175 requires health clubs to post a \$25,000 bond.

In **Florida**, SB 1310 changes the amount of the bond required from travel agents based on whether the agent books travel from Florida to a terrorist state, as defined, and whether the travel agent also sells vacation certificates. Travel agents that annually certify that they do not book travel to terrorist states must post a \$25,000 bond or a \$50,000 bond if they also sell vacation certificates. Agents that certify that they arrange travel to terrorist states but have no other business or commercial dealings with such states must post a \$100,000 bond or a \$150,000 bond if they also sell vacation certificates. Travel agents that certify that they arrange travel to terrorist states and also have other business or commercial dealings with such states must post a \$250,000 bond or a \$300,000 bond if they also sell vacation certificates.

*--Dead for 2008.* **Connecticut** SB 137 would have required private solid waste haulers to be licensed and to post a bond of \$10,000 per vehicle. **Georgia** HB 1381 would have required locksmiths to be licensed and to post a \$25,000 bond. **Oklahoma** HB 2537 started off a bill to license and bond door-to-door salespersons. It was amended to require licensing and bonding of employment agencies in the state, but failed to pass.

## **PUBLIC OFFICIAL BONDS**

*--Enactments.* Every year, there are new charters enacted in **Georgia**, which require public officials in new towns or other entities to post bonds. HB 1182 creates a county manager for Toombs County, who could be required to post a surety bond in an amount not less than \$100,000. SB 467 would do the same for the county manager of Upson County.

*--Defeated.* **Alabama** HB 110 would have changed the current bond requirements for officials in all counties of the State, and would require any county employee that the law or any county commission designates to post a surety bond. Currently, such bonds must be payable to the state, but the bill would change so that the bond would have to be payable to the county's treasury. Further, the bill would authorize county commissions to require any director or member of a public board or commission to post a bond that would be conditioned on the faithful performance of the duties of the office. The county commission would determine the amount of the bond, which would have to be payable to the public board or commission on which the person serves. Such boards and commissions would be able to require its employees to be bonded and would have the authority to determine the amount of the bonds required. Employee bonds would be conditioned on faithful performance of their duties.

**Michigan** HB 6605 would have eliminated the public official bond for members of the State Transportation Commission.

**New York** SB 7174 would have permitted the New York Mutual Insurance Reciprocal (NYMIR) to write public official bonds. SFAA opposed the legislation. We questioned how NYMIR would perform the prequalification function that makes surety bonding unique among insurance products. What underwriting criteria and expertise will NYMIR use to review applicants for a public official bond? Can it reject an application from one of its subscribers for a public official bond? The whole purpose of NYMIR is to write insurance for its subscribers, and that is why its subscribers have joined. SB 7174 seems to contemplate that NYMIR will fill a current void and write public official bonds for those who cannot get them in the current market. Given the nature of a surety bond, however, that is exactly the opposite of what NYMIR should be permitted to do. SFAA also argued that allowing NYMIR to write public official bonds could mean that taxpayers in municipalities will pay twice for these bonds—once for the premium and then again for the claims. To subvert the purpose of the public official bond and to provide bonds to unqualified subscribers of NYMIR is equally economically unworkable and a disservice to the public that the bond is intended to protect.

## APPEAL BONDS

**--Enactments.** **Rhode Island** HB 7882/SB 2509 would cap the supersedeas bond at \$50 million of all appellants collectively regardless of the value of the judgment in order to stay the execution of a judgment related to the Master Settlement Agreement. The bill has been sent to the Governor for signature.

**--Carryover.** **New Jersey** AB 3091/SB 2116 would cap the appeal bond in civil actions to the total value of the monetary judgment or \$50 million, whichever is less.

**--Defeated.** **Mississippi** HB 827/SB 2525 would have eliminated the surety bond for tax appeals. North Carolina SB 740 would have repealed the existing \$25 million cap on appeal bonds and allowed the courts to decide if the bond could be in an amount less than the full amount of the judgment in any civil action. The bill would have required such a decision to be based on the amount of the judgment, the limits of all of the appellant's applicable liability policies for which the insurer has released all reservations of right or the right to deny coverage, and the appellant's aggregate net worth. **Oklahoma** SB 1467 would have capped appeal bonds at \$25 million, and at \$1 million for small businesses, which would be those with less than 250 employees. This same bill passed last year as part of a tort reform package, which the Governor vetoed. The bill moved but was not enacted again this year.

## OTHER COURT BONDS

### Uniform Trust Act

The Uniform Trust Code was introduced in a few states this year. The bills provide that trustees only would be required to furnish a bond to secure the performance of their duties when the court decides that it is necessary to protect the interests of the beneficiaries. A bond also could be required if it is in the terms of the trust and the court has not dispensed with this requirement. The court also would have the authority to determine the amount of the bond, the terms of the trustee's liability, and may modify or terminate the bond at any time. Trust companies, title insurance companies, banks, national banking associations and savings and loan associations would not need to give a bond, even if terms of the trust require one. If the trustee resigns, any liability of the trustee or of the sureties on the bond for the acts and omissions of the trustee would not be discharged or affected by the trustee's resignation. In 2008, **Arizona** HB 2806 was enacted and **Connecticut** HB 508 and **Oklahoma** SB1825 was defeated.

**--Carryover.** **New Jersey** SB 2221 would enact the Uniform Trust Code of the National Conference of Commissioners on Uniform State Law (NCCUSL). The bill would provide that trustees would be required to furnish a bond to secure the performance of their duties when the court or surrogate decides that it is necessary to protect the interests of the beneficiaries. A bond also could be required if it is in the terms of the trust and the court has not dispensed with this requirement. Even if the trustee resigns, any liability of the trustee or of the sureties on the bond for the acts and omissions of the trustee would not be discharged or affected by the trustee's resignation.

### Notary Bonds

**--Dead for 2008.** **Kentucky** HB 648 would have increased the bond required of notaries public to \$25,000. The current bond is \$200 to \$1,000.

### **Other Court Bonds**

**--Enactments.** **Rhode Island** HB 7985/SB 2743/SB 2755 allows the court to waive the surety bond for the guardian of an estate regardless of the value of the ward's estate.

**--Defeated.** **Michigan** HB 5188 would have changed the bonding requirement for conservators of a trust for an estate of a deceased person, providing a dollar threshold and other conditions under which the bond would not be required. Currently, the law provides that a court may require the conservator to furnish a bond with the sureties that the court specifies. In lieu of any sureties, the law permits securities to be pledged or a mortgage on land. The bill would have authorized the court to require a bond if it determined that the value of cash and property, which is readily convertible into cash in the estate and is in the conservator's control, exceeds the limit for administering a decedent's estate under existing law. The bond could be waived if: the estate contains no property readily convertible to cash and if cash is held in a restricted account with a financial institution; the conservator has been granted trust powers under the State's banking code; the court determines that requiring a bond would impose a financial hardship on the estate; or the court states on the record the reasons why a bond is not necessary

### **MISCELLANEOUS BONDS**

#### **Workers Compensation Self-Insurance Bonds**

In **New York**, the Workers Compensation Board (WCB) released a report on alternate funding models for workers compensation self-insurance pursuant to a directive from a 2007 law. Currently, New York requires approved self-insurers to provide security for their liabilities, which can be met with a surety bond. The report recommends moving from individual security deposits to a guarantee fund, eliminating bonding. SFAA worked with AIA to present the surety perspective. SB 8102 was introduced this year to implement the report's recommendations, however; it would have impacted group-self insurers only. SFAA saw this as a positive development since it was limited and retained the option of self-insuring individually. SB 8102 failed to move and SB 8790 was introduced and enacted at the 11<sup>th</sup> hour of the session. SB 8790 imposes stricter financial regulations on group self-insurers for workers' compensation plans and requires them to hire an administrator that has to post a bond in the amount of \$500,000 for each group administered. The Chair of the WCB may set the amount of the bond if necessary. The AIA local counsel has told SFAA that the report's proposal for self-insurance plans will be dealt with in 2009.

Most recently, SFAA received a report from the Washington Self-Insurers Association (WSIA) on an Alternative Collateral Program (ACP) that the MMC Securities Corp. presented to them, whereby all surety obligations would be replaced with a fund comprised of assessments charged to the self-insurers. WSIA contended that California's ACP has been successful and requested financial information from its members to evaluate the feasibility of such a move. The ACP was presented to WSIA members as a cost-savings initiative. SFAA currently is addressing this issue with its Commercial Surety Advisory Committee.

**--Carryover.** **New Jersey** AB 3353 would permit the establishment of workers' compensation programs and group self-insurance plans through collective bargaining. Existing law permits the use of a surety bond to secure the liabilities in a self-insurance plan.

**--Dead for 2008.** **Missouri** HB 1808 would have re-iterated in the State's law what was previously laid out in regulations for workers compensation self-insurance plans. **Ohio** HB 179 would have required the workers' compensation self-insurance bond to cover reimbursement of health insurers and employees for the payment of medical benefits in addition to the required coverage in existing law. **Tennessee** SB 2902 would have authorized the Commissioner of Commerce and Insurance to adopt rules for an alternative security system for workers' compensation plans, requiring self-insured employers to participate in a security fund. SFAA contacted the AIA to gather information on this bill and learned that there was no intent to move the bill. It was used for other purposes unrelated to bonding and the bill died in committee.

## UPDATE ON RECENT COMMERCIAL SURETY ISSUES

### **Viatical Settlements**

Many states are looking to enact recent model legislation of the National Association of Insurance Commissioners (NAIC) to regulate viatical settlement providers and brokers. The bill would require such providers and brokers to post a license bond, which could be in the form of a surety bond, in the amount of \$250,000. Under all the bills, a deposit of cash, a certificate of deposit, or securities could be posted. Surety bonds would have to be issued by insurers licensed in the State. The bond would have to be in favor of the State, and authorize the Insurance Commissioner to make recovery on behalf of any person in the State who sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices of the viatical settlement provider or broker.

**--Enactments.** **Indiana** HB 1379, **Iowa** SB 2392, **Nebraska** LB 853, **Ohio** HB 404, **Vermont** HB 563 and **West Virginia** SB 704 contain the \$250,000 bond requirement. **Oklahoma** SB 1980 gives the Insurance Commissioner the authority to require a bond and to set the amount, while **Oklahoma** SB 565 requires a \$50,000 bond. Both bills have been signed into law.

**--Dead for 2008.** **Connecticut** SB 316, **District of Columbia** Bill 294, **Hawaii** SB 3021, **Kansas** SB 624, **Illinois** HB 4941 and **Minnesota** HB 3534/SB 3063 failed to pass this year.

### **Discount Medical Plan Providers**

The new NAIC Discount Medical Plan Model Act requires discount medical plan providers to post a \$35,000 license bond or a deposit with the Insurance Commissioner.

**--Enactments.** **West Virginia** HB 4404/SB 575 enacts the NAIC model legislation with the bonding requirement.

**--Dead for 2008.** **Delaware** SB 58 would have required discount medical plan organizations to post a license bond of not less than \$50,000. The Insurance Commissioner would have determined the amount of the bond required.

### **Pharmacy Benefit Managers**

**--Enactments.** **Louisiana** HB 1366 subjects pharmacy benefit managers to the existing requirements for third party administrators of health and life insurance benefits, including a requirement for a surety bond in the amount of \$100,000.

*--Dead for 2008.* **Illinois** SB 2028 would have repealed the \$100,000 bond requirement enacted in 2007. **West Virginia** HB 2328 would have authorized the Insurance Commissioner to require a surety bond in an amount and in a form that he or she considers appropriate to ensure the financial solvency of a pharmacy benefit manager.

### **Boxing/Martial Arts**

*--Enactments.* **Kentucky** HB 684 subjects promoters of kickboxing and mixed martial arts events to the bond requirements of existing law for wrestling and boxing match promoters and persons holding such events. The bond must be in the amount of \$5,000 and is conditioned on the payment of taxes. Also, the bond would be responsible for guaranteeing any penalties and fees. **New Hampshire** SB 309 expands existing bonding requirements for boxing and wrestling matches to mixed marital arts and kickboxing. Current law authorizes the Boxing and Wrestling Commission to require promoters to post a surety bond in an amount that the Commission deems appropriate. **Tennessee** HB 2633 requires boxing, mixed marital arts and kickboxing promoters to post a \$25,000 license bond.

*--Dead for 2008.* **Alabama** HB 279/SB 339 would have created the Alabama Boxing Commission; provide for the membership, powers, and duties of the commission; create a medical advisory panel for the commission; require promoters of boxing matches and boxers to be licensed; provide for exemptions; require certain standards for the buildings where boxing matches are staged; prohibit boxers from boxing while under the influence of alcohol or drugs; and impose age requirements on boxers. **Georgia** SB 413 would have amended the existing law to specify a \$50,000 license bond for promoters of boxing, kickboxing and mixed martial arts matches.

### **Restatement of the Law on Surety**

Legislation continues to be introduced to adopt a change in the definition of “surety” from the Restatement of the Law on Surety of the American Law Institute (ALI). The ALI referred to sureties as “secondary obligors” and this new terminology has caused states to amend their versions of the Uniform Commercial Code to contain the reference to surety as “any other secondary obligor.” These changes to the law have no substantive impact on surety.

*--Enactments.* **Illinois** SB 2080, **Pennsylvania** HB 1152, **Tennessee** HB 3949/SB 3993 and **Vermont** HB 563 enacted the changes to the UCC.

*--Dead for 2008.* **Massachusetts** HB 4302 and **Wisconsin** AB 480 failed to pass when the Assembly adjourned for the year.

## **LOOKING AHEAD TO 2009**

All the states will be in session in 2009. Virtually every state will convene sometime in January. Alabama, Nevada and Oklahoma will start in February and Florida and Louisiana have the late spring starts in March and April, respectively. For many states, this will be the start of a new two-year session. For New Jersey and Virginia, this is the second year of a two-year session that began in 2008.

### ***Key Changes in the State Political Landscape for 2009***

Voters in the November 2008 elections changed the landscape in the states, where the big story was party control of state houses. The Democrats gained control of both chambers in four states: Delaware, Nevada, New York and Wisconsin. The Republicans gained control of both chambers in two states: Oklahoma and Tennessee. The Democrats now control both houses in 27 states, while the Republicans control both houses in 15 states. This represents the fewest number of states with politically divided legislatures in over 20 years. In 7 states, the two chambers are dominated by opposing political parties: Alaska, Indiana, Kentucky, Ohio, Michigan, Pennsylvania and Virginia. In Montana, the Republicans gained a 3 vote majority in the Senate, and the House is tied 50-50. Nebraska is a unicameral and non-partisan legislature.

There were 11 gubernatorial elections this year. The Democrats gained one office in Missouri so that they now control the governor's mansion in 29 states to 21 for the Republicans. Factoring in the governorships, the Democrats control the legislature and the governor's mansion in 17 states, the Republicans control 8, and 24 states have a divided government.

Of note, the New Hampshire Senate became the first state legislative chamber in history in which the majority of members are women. As a result of the recent elections, women hold 13 of the 24 seats.

Party control of the state chambers and the governor's office are particularly important this year because the state legislative and congressional districts are redrawn every ten years according to the U.S. census and redistricting will be done in 2010. In addition, the party in control can appoint new legislative leaders so that the insurance industry may be looking at several new insurance committee chairs in the states in 2009.

### ***Additional Insurance and Surety Issues Expected in the State Legislatures in 2009***

The changes in the composition of some of the state legislatures in the November 2008 Presidential elections and the economy both will have an impact on the state legislative agendas. Like the opposition of some in Congress to the industry's use of information from credit reports, bans or restrictions on the use of credit scores are expected in many states in which the Democrats have gained control of both chambers of the legislature. This legislation has been limited primarily to personal lines insurance to date.

The following are some additional issues that we anticipate in the state legislatures in 2009, which have either been generated or gotten new life from the current political and economic situation:

***Antitrust***—The Florida Senate Banking and Insurance Committee is studying the repeal of the insurance industry's immunity under the Florida antitrust statute. The new incoming Senate President initiated this issue late last year. Application of the state antitrust laws to the insurance industry and to advisory and statistical organizations, such as SFAA, is largely uncharted waters. There is little case law or enforcement of state antitrust laws against the industry, largely due to state exemptions that mirror the federal McCarran Act.

***Bad Faith***—The trial bar is expected to push bad faith legislation in Florida, Idaho, Louisiana, Michigan, Minnesota, Oregon and Washington. SFAA will review all bills for application to

surety and fidelity. The other states in which there are ongoing issues with the trial bar that could produce bad faith or other anti-tort reform measures are: California, Colorado, Illinois, Nevada, New York, New Jersey and Pennsylvania.

***Regulation of Credit Default Swaps (CDS)***—Given the role that credit default swaps played in the meltdown on Wall Street, some state insurance regulators may attempt to regulate CDSs as insurance, or specifically as surety or financial guarantee, depending on the definitions and other licensing, capital and financial regulations in their insurance code. A CDS is a contract under which the seller promises the buyer to pay upon the occurrence of a credit event, usually a failure to pay, at a specific entity.

The Missouri Insurance Department recently issued a bulletin stating that it will regulate certain CDSs as surety as of January 1, 2009, although the Department will use discretion in its enforcement authority to the extent any comprehensive federal regulatory scheme is developed for CDSs. Sellers of such CDSs must be licensed in Missouri, comply with the capitalization requirements and submit to financial and market conduct regulation as insurers.

The key will be New York because New York law generally has governed regarding the regulation of surety and financial guarantees, due to the extraterritorial statute, the Appleton Law. While New York originally stated that it would seek to regulate CDSs as insurance in some manner, in more recent testimony in Congress, the Department said that it would wait to see what progress federal regulators make on addressing these unregulated products. The New York legislature will conduct a hearing on CDSs in early December. There was legislation introduced in Congress late this year to require every swap and derivative to be traded on a regulated exchange. Some of the federal banking and securities regulators have said that they are working on a clearinghouse for these transactions so that all the appropriate regulators will have information needed to monitor and decrease the risk in these transactions.

***Mortgage Originator and Broker Bonds.*** States may move quickly in 2009 to implement Title V of the Housing and Economic Recovery Act of 2008, a sweeping housing bill Congress enacted this year. Among other provisions, the new federal law contains a comprehensive new system for licensing and regulating mortgage originators, which are defined as individuals who take a residential mortgage application or offer or negotiate the terms of a residential mortgage for compensation or gain.

Under the new federal law, state mortgage originators will have to be state-licensed under new minimum licensing standards that the law creates for the states. Among the licensing requirements is a net worth or surety bonding requirement. State licensed mortgage originators also must be registered with the new Nationwide Mortgage Licensing Registry (National Registry), under which they will be given a unique identifier to facilitate electronic tracking of the loan originators and access to the history of their activities by state and federal regulators. States are given two years to put these minimum licensing requirements in place or the Department of Housing and Urban Development (HUD) must implement a system for loan originators from states that are not compliant. This means that every state must have either a net worth requirement, surety bond or a recovery fund in place for mortgage originators in the next two years.

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators will create the new National Registry. SFAA contacted the Conference staff after the housing bill was enacted to offer assistance on the surety bonding issues. The vast majority of states already have a mortgage broker bond requirement. While most of the state banking commissioners are familiar with the license bond requirements, what is new to them is the federal requirement that the bond amount now must be based on the dollar amount of the loans originated. The CSBS has asked for SFAA's assistance in the near future when it develops guidelines for the state regulations that will be needed once the model legislation is enacted in the states. SFAA prepared a description of a mortgage broker bond and some suggested regulatory language for a bond amount based on the mortgage originator's loan volume. The bond amounts we suggested would range from \$12,500 to \$50,000. SFAA staff also is working with the individual state regulators and legislators on the legislation.

***Depository Bonds.*** SFAA has been asked to assist state regulators in Tennessee and Oklahoma in finding new sureties to write depository bonds that guarantee payment of state funds deposited in banks in the event of bank failure. In both states, one surety has been the primary surety writing most of these bonds and that surety is withdrawing from the market in both states. Some of these bonds will need to be replaced by a new surety as early as February 2009.

SFAA believes that the current law in both states might be one drawback to a competitive market for these bonds. Both states require that the surety be rated in the highest category of at least two nationally recognized rating agencies acceptable to the State Treasurer. SFAA believes that the primary criteria for the surety issuing any bond should be that it is licensed and in good standing with the state insurance department. SFAA has been in contact with the Tennessee Bankers Association and the Attorney General's office in Oklahoma regarding changes to the laws regarding the surety eligibility requirements. Tennessee is drafting amendments that will require the highest rating from a single rating agency and Oklahoma still is considering whether it would be willing to amend its law.

There are sureties that qualify under the current requirements. It is unlikely that either state would be willing to make significant changes to the existing surety eligibility requirements if the change would not result in some sureties coming into the market for depository bonds.

#### ***Other Key Issues on the State Legislative Agendas***

The National Conference of State Legislators (NCSL) recently released the top nine issues that state legislators expect to dominate the 2009 state legislative agendas. All are related in some way to the current recession in the U.S. economy:

***--State Budgets.*** The number one issue that most states will face in 2009 is budget deficits. Nearly 40 states will be looking at a shortfall in revenues in 2009 that will have to be addressed. The NCSL estimates that the states collectively will face a \$97 billion budget gap in the next 18 to 24 months.

***--Transportation and Infrastructure.*** Infrastructure is in need of repairs and modernization at a time when revenues for this are disappearing. States may once again look to PPPs, despite the increased cost of capital for these private investors, as well as increased taxes and federal aid. Many states are bringing shovel-ready projects to Congress in the hope that Congress will

provide funding in an economic stimulus package in early 2009 or through the agency appropriations process later in the year.

**--*The Costs of Higher Education.*** At the same time, with the availability of student loans and other financial aid decreasing, state colleges and universities are raising tuition. States are looking to help students for whom college is increasingly unaffordable.

**--*Health Care Costs.*** States are looking for federal aid to fund the increasing costs of Medicaid and other programs designed to help the uninsured. As unemployment increases, the Medicaid rolls will increase.

**--*Clean Energy and Alternatives.*** Some state legislators see renewable energy as encouraging local job growth and economic development.

**--*Sentencing and Corrections.*** The growth of the state prison populations also is straining state budgets. States are looking at cost-effective correction options.

**--*Home Mortgages.*** States want to help residents avoid foreclosures and obtain home loans. In this context, states are moving toward regulation of foreclosure consultants to protect consumers. Some of this legislation involves licensure and bonding.

**--*Working Families.*** States want to give families incentives to save and invest so that they will have the needed assets in the future for college tuition, home ownership and retirement. Families are increasingly in debt and have little or shrinking net worth.

**--*Unemployment.*** With unemployment rates on the rise, state programs face shortfalls from increasing claims for unemployment and other benefits, as well as demands to extend the time periods for receiving aid from the state.

## 2008 STATE ENACTMENTS ON COMMERCIAL SURETY

### ALABAMA

#### **HB 381: Dangerous Dogs**

**INTRODUCED:** 02/12/2008

**ENACTED:** 04/10/2008

HB 381 gives courts the authority to declare a dog as dangerous or a nuisance and order the dog's destruction in Mobile County. If the dog is not destroyed, the new law requires the owner to obtain a surety bond in an amount not less than \$100,000 for the medical or veterinary costs of the dog's future dangerous actions. The law became effective upon enactment.

### ALASKA

#### **No Commercial Surety Enactments in 2008**

### ARIZONA

#### **HB 2806: Trust Code**

**INTRODUCED:** 02/11/2008

**ENACTED:** 05/27/2008

HB 2806 adopts the Arizona Trust Code. The new law provides that trustees only are required to furnish a bond to secure the performance of their duties when the court decides that it is necessary to protect the interests of the beneficiaries. A bond also may be required if it is in the terms of the trust and the court has not dispensed of it. The court also has the authority to determine the amount of the bond, the terms of the trustee's liability, and may modify or terminate the bond at any time. Trust companies, title insurance companies, banks, national banking associations and savings and loan associations do not need to give a bond, even if terms of the trust require one. Even if the trustee resigns, any liability of the trustee or of the sureties on the bond for the acts and omissions of the trustee will not be discharged or affected by the trustee's resignation. The new law became effective on December 31, 2008.

#### **HB 2822: Financial Responsibility—Pest Control Businesses**

**INTRODUCED:** 02/11/2008

**ENACTED:** 07/07/2008

HB 2822 changes the financial responsibility requirements for licensed pest control businesses. Current law requires the licensee to deposit cash, a certified check or obtain liability insurance or a surety bond. The new law permits “self-insured retention” as an additional method of meeting the financial responsibility requirements. The new law increases the amount required from not less than \$300,000 to an amount not less than \$500,000. The bill would have eliminated the requirement that the insurer issuing the bond be licensed in the State, and the requirement for suspension of the license should the bond fall below the required amount. As enacted, these requirements were maintained in the law. The new law became effective upon enactment.

**SB 1174: Notary Public**

**INTRODUCED:** 01/23/2008

**ENACTED:** 04/28/2008

SB 1174 requires notaries public to file the bond required under existing law with the Secretary of State instead of with the clerk of the superior court in the notary's county of residence. The new law became effective upon enactment.

**ARKANSAS**

**Not in Session for 2008**

**CALIFORNIA**

**AB 180: Foreclosure Consultants**

**INTRODUCED:** 01/24/2007

**ENACTED:** 09/25/2008

AB 180 requires foreclosure consultants to register with the Department of Justice and to post a surety bond in the amount of \$100,000. The bond has to be in favor of the State for the benefit of the homeowner in the event of the consultant's violation of the new law or any provision in existing law. The bill would have required a bond for each transaction in the amount of \$100,000, which we believed was confusing language. The bond would have had to be in favor of the homeowner or the State, but it was amended to be in favor of the State only. SFAA worked with the AIA local counsel on this bill to improve the bond requirement. We are pleased that these changes were made as we think our members will be better able to underwrite this bond, making it more available. The new law became effective on July 1, 2009.

**AB 1960: Miscellaneous Bond—Financial Assurance**

**INTRODUCED:** 02/13/2008

**ENACTED:** 09/29/2008

AB 1960 imposes new penalties on oil production facilities. The new law provides that a bond is required for facility operators who continually violate existing law, or have outstanding liabilities to the State. The bond would be a “life-of-well” or a “life-of-production facility” bond that has to be in an amount that ensures the following: proper plugging and abandonment of the well by the State; the safe decommissioning of the facility; and financing for any spill and incident cleanup with limited costs to the State. Failure to do these allows the bond to be used for these purposes. The bond will be released once the facility had been properly decommissioned. As introduced, the bill did not impact bonding, but it was amended in the Assembly to include the provisions discussed above. The new law became effective on January 1, 2009.

**AB 2578: Miscellaneous Bond**

**INTRODUCED:** 02/22/2008

**ENACTED:** 09/28/2008

AB 2578 allows the Public Utilities Commission to require a performance bond from telecommunications companies as a precondition of obtaining certain permits and certificates. The bond has to be sufficient to facilitate the collection of fines, penalties, and restitution for enforcement actions that are taken against the company. The new law became effective on January 1, 2009.

**SB 1007: Miscellaneous Bond—Exchange Facilitators****INTRODUCED:** 02/23/2007**ENACTED:** 09/30/2008

SB 1007, as introduced, had no relation to fidelity bonds. The bill was amended and as enacted it regulates exchange facilitators which are those who are engaged in the facilitation of like-kind exchanges of property pursuant to federal tax law. The new law requires such persons to be licensed, and to obtain one of the following: a fidelity bond or bonds in an amount not less than \$1 million from an insurer licensed in the State; or post cash, securities, or an irrevocable letter of credit for the same amount. The bill would have allowed the Commissioner of Corporations (Commissioner) to determine the amount of the bond, so long as it was in the amount of at least \$1 million, but that provision was eliminated during the session. Another provision that would have required the Commissioner to approve the insurance company issuing the fidelity bond also was eliminated. While the bill would exempt financial institutions and title insurers, controlled escrow companies and underwritten title companies from the licensing requirement, it does require them to comply with bonding and insurance requirements applicable under the new law to licensed exchange facilitators. The new law became effective on January 1, 2009.

**SB 1225: Miscellaneous Bond—Private Cemeteries****INTRODUCED:** 02/14/2008**ENACTED:** 07/10/2008

SB 1225 allows limited liability companies (LLC) to establish private cemeteries. Such companies are required to maintain a form of security for paying any liabilities that the law imposes for damages. Surety bonds will be accepted to fulfill this requirement. A trust or bank escrow account, cash, bank certificates of deposit, United States Treasury obligations, and letters of credit also would be accepted. For LLCs with five or fewer licensed employees, the security would have to be in an amount not less than \$1 million. If the LLC employs more than five licensees, an additional \$100,000 per licensee will be required. The total amount of security however, is capped at \$5 million. As introduced, the bill did not impact bonding, but it was amended in the Senate to include these provisions which have been signed into law. The new law became effective on January 1, 2009.

**SB 1432: License Bonds—Contractors****INTRODUCED:** 02/21/2008**ENACTED:** 07/21/2008

SB 1432 changes the conditions under which the surety bond is liable for claims for home improvement contractors. The new law provides that a home owner is able to make claims against the bond for certain violations, but may only make such a claim if the damages occurred when the owner did not intend to sell the home when the violations occurred. The new law also makes a technical adjustment to the time at which the two year period for making claims would start, which is based on the expiration or revocation of the contractor's license. The new law became effective on January 1, 2009.

**COLORADO****HB 1260: Miscellaneous Bonds—Titles to Manufactured Homes****INTRODUCED:** 01/31/2008**ENACTED:** 04/14/2008

HB 1260, effective on July 1, 2008, changes the amount of the surety bond required in connection with the issuance of the certificate of title for a manufactured home, which serves to indemnify anyone who might suffer damages or a loss because the certificate was issued. Prior law required that the bond must be in the amount that the Executive Director of the Department of Revenue requires. The new law instead requires that the bond be in an amount equal to twice the value of the manufactured home as listed in the assessor's records. A savings account, deposit or certificate of deposit also is acceptable under existing law.

*--Bond for Removal of Home:* Further, the new law provides that in order to obtain a certificate to remove the home, the consent from all lien holders and all holders of a mortgage will be required. In lieu of such consent, a corporate surety bond in an amount equal to 1.5 times the value of the lien may be posted. A savings account, deposit or certificate of deposit also will be accepted.

### **HB 1319: Registration Bond—Manufactured Home Installers**

**INTRODUCED:** 02/01/2008

**ENACTED:** 06/02/2008

HB 1319 eliminates the bonding requirements for registered manufactured home installers after January 1, 2009, and increases the amount of liability insurance required after that date. Existing law requires that a letter of credit, deposit, certificate of deposit or a surety bond in the amount of \$10,000 be furnished when the installer registers. The new law became effective upon enactment.

### **SB 114: Tax Bond**

**INTRODUCED:** 01/30/2008

**ENACTED:** 05/20/2008

SB 114 changes the current law concerning employee leasing companies. The new law requires such companies to provide evidence of security for its unemployment tax withholding, which may be in the form of a surety bond. The bond must be in an amount equal to 50% of the average annual amount of the tax that was assessed within the previous calendar year. For new companies, the bond will be calculated as the standard tax rate multiplied by 50% of the estimated projected taxable payroll for the current calendar year according to the company's own estimates. In lieu of the bond, cash or a letter of credit may be deposited. Of note, the company also may provide independently audited financial statements that have been prepared by a CPA, or provide evidence that the company has been accredited by a bonded and independent qualified assurance organization instead of cash, a bond, or a letter of credit. The new law became effective on August 5, 2008.

### **SB 144: Miscellaneous Bond**

**INTRODUCED:** 02/05/2008

**ENACTED:** 04/21/2008

SB 144 requires a repair shop to obtain a surety bond when seeking a certificate of title for an abandoned motor vehicle if the shop intends to sell it. The bond must be in an amount equal to twice the retail fair market value of the vehicle. The new law became effective on January 1, 2009.

**SB 153: Miscellaneous Bond****INTRODUCED:** 02/11/2008**ENACTED:** 06/05/2008

SB 153 directs the State Board of Health to adopt rules requiring home health agencies to obtain professional liability insurance or a surety bond. The rules will set the amounts required. The new law became effective on August 5, 2008.

**CONNECTICUT****HB 5113: Professional Employer Organizations****INTRODUCED:** 02/13/2008**ENACTED:** 06/02/2008

HB 5113 requires Professional Employer Organizations (PEO) to maintain at least \$150,000 in working capital or to obtain a bond, letter of credit, or securities with a market value of \$150,000. The bond serves to secure the payment of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the PEO does not make the payment when due. If the PEO's annual financial statements do not indicate positive working capital, the bond must be for \$100,000 plus an amount sufficient to cover the working capital deficit. The new law also provides that a "covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation and employer's liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond." These provisions are based on model legislation that has been introduced and enacted in other states in the past few sessions. The new law became effective on January 1, 2009.

**HB 5577: License Bond—Correspondent Lenders****INTRODUCED:** 02/21/2008**ENACTED:** 06/12/2008

HB 5577 subjects correspondent lenders to the current license bond requirement for mortgage brokers and lenders, and increased the amount of the bond for brokers and lenders from \$40,000 to \$80,000 as of January 1, 2009. Originally, the bill would have increased the bond to \$60,000. The new law also imposes new regulatory requirements on mortgage brokers and lenders that specify further permissible and prohibited actions within the scope of acting as a mortgage broker or lender. The bond also now is required to respond to any unpaid costs of an examination of the licensee. Of note, the bill repealed the requirement that the Banking Commissioner automatically suspend the license on the effective date of the license bond's cancellation, unless the bond has been replaced or renewed. The law also provides that the license can be suspended if the licensee fails after 30 days to pay the costs of an examination. The new law became effective on July 1, 2008.

**DELAWARE****SB 168: Financial Assurance—Hazardous Waste****INTRODUCED:** 06/26/2007**ENACTED:** 05/15/2008

SB 168 requires any party seeking to transfer the ownership of a hazardous waste facility to submit all appropriate inquiry findings to the Department of Natural Resources and Environmental Control (Department) and other parties to the transfer prior its occurrence. Such facilities are required to provide evidence of financial assurance to cover expenses necessary to stabilize the facility at time of closure within 60 days of the transfer. The new law requires the Department to promulgate regulations specifying the requirements for maintaining the facility, the amount of chemicals it maintains and the chemicals generated as wastes. These requirements may be met with insurance, a guarantee, a surety bond, a letter of credit, proof of assets, qualifying as a self-insurer, or other agreements that would be acceptable to the Secretary of the Department. The new law applies to facilities reporting a cumulative total of one million pounds or more of any combination of hazardous chemicals or substances and a facility classified as a "large quantity generator" of such hazardous wastes under existing state rules. The new law became effective upon enactment.

### **DISTRICT OF COLUMBIA**

#### **B 1020: Mortgage Lenders and Brokers**

**INTRODUCED:** 11/13/2008

**ENACTED:** 12/22/2008

B 1020 is the Mortgage Lender and Broker Emergency Amendment Act of 2008. The new law imposes a net worth requirement on mortgage brokers in addition to the license bond requirement under current law. The new law also permits the broker to pay into a recovery fund as the Commissioner of the Department of Insurance, Securities and Banking prescribes in lieu of meeting the net worth and bonding requirements. Current law bases the amount of the bond on the loan volume of the broker with a base amount of \$12,500 and a maximum of \$50,000.

The bill was introduced late in the session and enacted at the 11<sup>th</sup> hour. It implements a new federal law enacted under H.R. 3221 (2008), which requires the Secretary of Housing and Urban Development (Secretary) to establish licensing standards for all mortgage loan originators and brokers, including bonding requirements. Under the federal framework, all state licensing laws must include a surety bond or a minimum net worth requirement. Of note, the federal law requires the bond amounts or the net worth levels to be based upon the volume of loans. H.R. 3221 also authorizes the use of recovery funds in lieu of bonding or a minimum net worth. All states have two years to implement the federal standards, or the Secretary's federal program will apply. The District of Columbia has chosen to require both a bond and a net worth standard, and also allow for a recovery fund payment. B 1020 also repealed the current requirements for the amount of the bond. The Commissioner of the Department of Insurance, Securities, and Banking will determine all requirements for the bond under the new law.

SFAA reviewed the bill as introduced and contacted the AIA, sending the local counsel our analysis of the bill. Unfortunately, the bill moved quickly to the Mayor's desk without any changes to the bonding provisions. The new law was enacted as an emergency bill so it became effective immediately, but it also expires 90 days after enactment on March 22, 2009. SFAA will continue to work on this issue, explaining to the Council the benefits of bonding over net worth requirements and recovery funds.

### **FLORIDA**

#### **HB 935: Public Official**

**INTRODUCED:** 03/04/2008

**ENACTED:** 06/17/2008

HB 935 creates the Marion County Hospital District (District), which will be governed by a board of trustees (Board). The new law requires that if the secretary/treasurer is someone other than a member of the Board, then a bond in an amount of not less than \$10,000 will be required. The Board will set the actual amount required. The new law became effective upon enactment.

**HB 7083: License Bond—Home Health Agencies**

**INTRODUCED:** 03/20/2008

**ENACTED:** 06/30/2008

HB 7083 requires applicants for a new home health agency license to post a license bond in the amount of \$50,000, which may be in the form of a surety bond or other equivalent security that the Agency for Health Care Administration (Agency) finds acceptable. Such acceptable alternate forms include letters of credit and trust accounts. The bond serves to secure the payment of administrative penalties and the fees and costs that the Agency incurred concerning the license that the licensee failed to pay within 30 days after they became final. The Agency is permitted to make a claim on the bond until one year after the license is no longer valid, one year after the license has been renewed a second time, or 60 days after any administrative or legal proceeding for penalties, fees or costs assessed during the first four years of the initial issuance of the license, whichever is later. The new law became effective on July 1, 2008.

**SB 1310: License Bond—Travel Agents**

**INTRODUCED:** 03/04/2008

**ENACTED:** 06/23/2008

SB 1310 changes the amount of the bond required from travel agents based on whether the agent books travel from Florida to a terrorist state, as defined, and whether the travel agent also sells vacation certificates. Travel agents that annually certify that they do not book travel to terrorist states must post a \$25,000 bond or a \$50,000 bond if they also sell vacation certificates. Agents that certify that they arrange travel to terrorist states but have no other business or commercial dealings with such states must post a \$100,000 bond or a \$150,000 bond if they also sell vacation certificates. Travel agents that certify that they arrange travel to terrorist states and also have other business or commercial dealings with such states must post a \$250,000 bond or a \$300,000 bond if they also sell vacation certificates. The new law became effective on July 1, 2008.

**SB 1892: Miscellaneous Bond—State Data Center System**

**INTRODUCED:** 03/04/2008

**ENACTED:** 06/10/2008

SB 1892 revises the State's Data Center System. The new law provides that the data center is to enter into service agreements with its customers. For primary data centers that a state agency does not operate, the agreements may provide for surety or a performance bond. The new law became effective upon enactment.

**SB 2012: License Bond—Public Adjuster Apprentices**

**INTRODUCED:** 03/04/2008

**ENACTED:** 06/23/2008

SB 2012 requires public adjuster apprentices to be licensed and post a surety bond in the amount of \$50,000, issued by a surety company licensed in the State. The bond is conditioned for the faithful performance of his or her duties as an apprentice. The new law requires the bond to be maintained for one year in addition to the license period. Only the Department of Financial

Services (Department) is authorized to make claims on the bond if the apprentice is found guilty of fraud or unfair practices in connection with his or her business. The aggregate liability of the surety is limited to the penal sum of the bond. Sureties may cancel the bond with 30 days notice to both the apprentice and the Department. The new law became effective on January 1, 2009.

**SB 2158: License Bond—Money Services Businesses**

**INTRODUCED:** 03/06/2008

**ENACTED:** 06/17/2008

SB 2158 increases the required amount of the license bond requirement for money transmitters and would require licensure instead of the current registration requirements. Under prior law, the Financial Services Commission (Commission) determined the amount required, up to \$250,000. Under certain conditions, the Commission was able to increase the amount required up to \$500,000 in extraordinary cases. The new law provides that the bond cannot be less than \$50,000 and it allows the Commission to increase it up to \$2 million. SFAA supported this increase, but advised on the limitations it could create in availability. The new law became effective on January 1, 2009.

**SB 2534: Performance Bonds for Vendors**

**INTRODUCED:** 03/06/2008

**ENACTED:** 05/21/2008

SB 2534 creates the Florida Health Choices, Inc. (Corporation) for a statewide affordable health insurance program. The new law authorizes the Corporation to require performance bonds for its vendor contracts. The new law became effective upon enactment.

**GEORGIA**

**HB 237: Tax Bond**

**INTRODUCED:** 01/31/2007

**ENACTED:** 05/14/2008

HB 237 subjects manufacturing equipment to the same sales and use tax requirement for manufacturing machinery. Current law allows a purchaser to obtain an exemption from the taxes by posting a surety bond that is conditioned on the purchaser's payment of the taxes if the sale is later determined not to qualify for the exemption. The new law became effective on January 1, 2009.

**HB 1033: Public Officials**

**INTRODUCED:** 01/29/2008

**ENACTED:** 03/10/2008

HB 1033 creates a new charter for the City of Edgehill. The charter requires both elected and appointed officers and employees of the City to post surety or fidelity bonds in the amounts and with the terms and conditions that the City Council requires by ordinance or law. The new law became effective on July 1, 2008.

**HB 1055: License Bond**

**INTRODUCED:** 01/31/2008

**ENACTED:** 05/14/2008

HB 1055 requires immigration assistance providers to be licensed and post a bond in the amount of \$5,000. The Secretary of State must approve the bond form, and the bonding company issuing it must be licensed in the State. The new law became effective on July 1, 2008.

**HB 1182: Public Official****INTRODUCED:** 02/13/2008**ENACTED:** 03/25/2008

HB 1182 created a county manager for Toombs County, who is required to post a surety bond from a surety company licensed to do business in Toombs County. The bond has to be in an amount that the Toombs County Board of Commissioners (Board) determines, but not less than \$100,000. The bond is for the faithful performance of the manager's duties and would serve to secure against corruption, malfeasance, misappropriation, or unlawful expenditure. The new law became effective on July 1, 2008.

**SB 467: Public Official****INTRODUCED:** 02/12/2008**ENACTED:** 05/14/2008

SB 467, effective on July 1, 2008, provides for a county manager in Upson County. The manager is required to post a surety bond for the faithful performance of his or her duties in an amount not less than \$50,000. The County Board of Commissioners (Board) will determine the amount required. The bond serves to secure against corruption, malfeasance, misappropriation, or unlawful expenditure and would have to be issued by a surety company licensed to do business in Upson County.

*--Purchasing Agents:* The manager will serve as the purchasing agent for the county, but also is permitted to appoint a person to perform such duties. The person that the manager appoints also will be required to post a surety bond in an amount not less than \$50,000 from a surety company licensed to do business in Upson County. The Board will determine the amount required. The bond is conditioned for the faithful performance of the agent's duties and would serve to secure against corruption, malfeasance, misappropriation, or unlawful expenditure.

**HAWAII****SB 3171: Miscellaneous Bond—Charitable Organizations****INTRODUCED:** 01/16/2008**ENACTED:** 06/13/2008

SB 3171 authorizes the Attorney General to require the electronic filing of the surety bond required of professional solicitors of a charitable trust, as well as electronic signatures. The bill eliminated the bond requirement for professional fundraisers at a charitable trust so that only the professional solicitors will have to be bonded. The new law became effective on July 1, 2008.

**IDAHO****HB 365: License Bond—Vehicle Dealers****INTRODUCED:** 01/17/2008**ENACTED:** 03/19/2008

HB 365 subjects dealers of "motor-driven cycles" to the existing license bond requirements for other types of dealers in the State. The bond amount is \$20,000. The new law became effective on June 2, 2008, 60 days after the end of the session.

**HB 440: License Bond—Truck Camper Dealers**

**INTRODUCED:** 01/31/2008

**ENACTED:** 03/14/2008

HB 440 subjects dealers who exclusively sell truck campers to existing law, which requires a license bond in the amount of \$10,000, which may be in the form of a surety bond from a surety company licensed in the State. In lieu of a corporate surety bond, a deposit or a certificate of deposit may be furnished. The new law became effective on January 1, 2009.

**HB 450: License Bonds—Residential Mortgage Brokers**

**INTRODUCED:** 02/01/2008

**ENACTED:** 03/31/2008

HB 450 eliminates the bond requirement in existing law for loan originators. The law required a surety bond in the amount of \$10,000, which had to be issued by a surety licensed in the State. The new law became effective on June 2, 2008.

**HB 451: Permit Bond—Collection Agencies**

**INTRODUCED:** 02/01/2008

**ENACTED:** 04/01/2008

HB 451 changes the permit and bonding requirements for collection agencies and debt or credit counselors. Prior law required a permit for agencies and counselors and a bond for each permit. The new law requires only one bond has to be obtained instead of two as under prior law. The amount of the bond was not changed. The new law became effective on June 2, 2008.

**SB 1397: License Bond—Public Adjuster Licensing Act**

**INTRODUCED:** 02/08/2008

**ENACTED:** 03/18/2008

SB 1397 enacts the NAIC public adjuster model legislation. The new law requires evidence of financial responsibility through a surety bond or letter of credit. The bond must be in at least the amount of \$20,000, and it has to authorize the Department of Insurance (Department) to make recovery on behalf of any person who sustains damages resulting from erroneous acts, a failure to act, conviction of fraud, or conviction of unfair practices as a public adjuster. Sureties are permitted to cancel the bond with 30 days written notice to the Department and the licensee. The new law became effective on July 1, 2008.

**ILLINOIS**

**SB 2080: Uniform Commercial Code**

**INTRODUCED:** 02/08/2008

**ENACTED:** 08/22/2008

SB 2080 re-defines surety to include any other secondary obligor pursuant to the Restatement of the Law of Surety that the American Law Institute issued recently. The current definition of surety is a guarantor. These changes to the law have no substantive impact on surety. The new law became effective on June 1, 2009.

**INDIANA**

**HB 1153: Financial Assurance—Pari-Mutuel Wagering**

**INTRODUCED:** 01/10/2008

**ENACTED:** 03/19/2008

HB 1153 would have authorized advanced deposit wagering on horse racing in the State that will be operated by secondary pari-mutuel operations. As drafted, the bill required the Gaming Commission to adopt rules that would prescribe a "guarantee or acceptable surety" to provide that the balances in an advance deposit wagering account will be paid. The bill was amended and as enacted, it does not contain any bonding requirements. The new law became effective on July 1, 2008.

**HB 1379: License Bond—Viatical Settlements**

**INTRODUCED:** 01/16/2008

**ENACTED:** 03/21/2008

HB 1379 would have adopted the NAIC model law for viatical settlement providers and brokers. As drafted, such providers and brokers would have had to post a license bond, which may be in the form of a surety bond, in the amount of \$250,000. The bill was amended on the House floor, where the NAIC model law was substituted for other provisions to regulate life insurance. The new law became effective on July 1, 2008.

**SB 307: Appeal Bond**

**INTRODUCED:** 01/10/2008

**ENACTED:** 03/21/2008

SB 307 requires an appeal bond in the amount of \$500 in the event that a business licensed through the Bureau of Motor Vehicles wishes to appeal the final decision of the Secretary of State in court concerning license applications, licenses, civil penalties and other investigations. The new law became effective on July 1, 2008.

**IOWA**

**HB 2556: License Bond—Mortgage Brokers and Industrial Loan Companies**

**INTRODUCED:** 03/11/2008

**ENACTED:** 05/10/2008

HB 2556 increases the amount of the license bond required for mortgage bankers and mortgage brokers from \$50,000 to \$100,000. The law requires a surety bond or collateral.

The new law also requires industrial loan companies to post a surety bond in the amount of \$25,000 from a surety company licensed in the State. The law only required licensure previously. Sureties are permitted to cancel the bond with 30 days notice to the Superintendent of Banking. The bond is for the State's use, as well as any persons with a cause of action against the license applicant, and it is conditioned on the applicant's faithful conformance to and abiding by the industrial loan company laws as well as any rules adopted to implement it. Sureties will be required to pay the State and to any person all funds that become due or owing to the State and such persons under the law. In lieu of the bond, alternative forms of collateral may be posted, so long as the collateral provides the same protections as the bond for both the State and consumers. The new law became effective on July 1, 2008.

**HB 2646: License Bond—Fire Protection System Installers**

**INTRODUCED:** 03/14/2008

**ENACTED:** 04/16/2008

HB 2646 requires fire sprinkler installers and maintenance workers to be licensed and obtain public liability insurance and a surety bond in an amount that the Department of Public Safety

will determine by rule. Cancellation notices must be issued 15 days prior to the effective date for surety bonds and insurance policies. The new law became effective on August 1, 2009.

**SB 2276: Financial Assurance—Disposal of Solid Waste and Permits**

**INTRODUCED:** 02/28/2008

**ENACTED:** 04/25/2008

SB 2276 expands the types of financial assurance instruments that an operator of a sanitary disposal project can provide. Prior law required cash, a surety bond, or an irrevocable letter of credit. The new law permits the operator to obtain insurance, a corporate or a local government guarantee, or to satisfy a corporate financial test or a local government financial test. The operator also may use a local government dedicated fund. The new law became effective on July 1, 2008.

**SB 2392: License Bond—Viatical Settlements**

**INTRODUCED:** 03/11/2008

**ENACTED:** 05/10/2008

SB 2392 authorizes the Insurance Commissioner to adopt rules that require viatical settlement providers and brokers to post a surety bond or other financial responsibility. The bill originally would have adopted the NAIC model law, which requires evidence of financial assurance in the amount of \$250,000, for which surety bonds could be posted. The new law became effective on July 1, 2008.

**KANSAS**

**HB 2315: License Bond—Home Inspectors**

**INTRODUCED:** 01/31/2007

**ENACTED:** 05/18/2008

HB 2315 requires home inspectors to register with the Home Inspectors Registration Board (Board) and to provide proof of financial responsibility, which may be in the form of a surety bond. The surety bond may not be in an amount less than \$10,000, and may not be terminated without 30 days prior written notice to the Board. An errors and omissions insurance policy in an amount not less than \$10,000 also will be accepted in lieu of the bond. As introduced, the bill also provided for a separate fidelity bond requirement to cover dishonesty in an amount not less than \$10,000, but this requirement was eliminated in the Senate. The new law became effective upon enactment.

**HB 2771: Miscellaneous Bond**

**INTRODUCED:** 02/06/2008

**ENACTED:** 04/21/2008

HB 2771 requires delinquent employers to post a bond or deposit cash or securities when the employer fails to file the reports required in connection with certain benefits contributions or for a delinquency in payments. SFAA believes that the bond creates adverse selection against the surety since it only is required of delinquent employers. The new law became effective upon enactment.

**KENTUCKY**

**HB 83: Public Officials**

**INTRODUCED:** 01/08/2008

**ENACTED:** 04/07/2008

HB 83 specifies that the bond required under existing law from the treasurer of the Public Service Commission must be a bond with surety. Prior law contained no such specification. The new law became effective on July 15, 2008, 90 days after adjournment.

**HB 552: License Bonds—Mortgage Lenders and Brokers**

**INTRODUCED:** 02/14/2008

**ENACTED:** 04/24/2008

HB 552 changes the license bond requirements for mortgage lenders and mortgage brokers. Under existing law, lenders are required to post a surety bond in the amount of \$250,000 and brokers are required to post a \$50,000 bond. The bond amounts remain unchanged, but the new law permits the Executive Director of the Office of Financial Institutions to recover expenses, fines, and fees that he or she has levied from the bond. The new law also allows the Executive Director to make recovery for borrowers and consumers suffering losses or damages as a result of the licensee's failure to comply with the law. Existing law already permits direct actions on the bond from consumers. The new law became effective upon enactment under emergency declarations related to the current state of the mortgage industry.

**HB 684: Promoters' Bonds**

**INTRODUCED:** 02/28/2008

**ENACTED:** 04/11/2008

HB 684 subjects promoters of kickboxing and mixed martial arts events to the bond requirements under existing law for wrestling and boxing match promoters and persons holding such events. The bond must be in the amount of \$5,000 and is conditioned on the payment of taxes. Also, the bond now must guarantee payment of any penalties and fees under the new law. The new law became effective on July 15, 2008, 90 days after adjournment.

**HB 765: Financial Assurance—Methamphetamine Contamination**

**INTRODUCED:** 03/04/2008

**ENACTED:** 04/24/2008

HB 765 changes the financial assurance requirements for cleaning up a methamphetamine lab site. The prior law required the bond to be in the amount of \$500,000. The new law establishes tiers that are based on the type of facility and chemicals present in the contaminated areas. For the first three tiers, the bond or other assurance must be in the amount of \$100,000. Tiers 1 and 2 are transient labs with limited contamination, while Tier 3 is an entrenched facility with elevated levels of contaminants and damage. For the fourth and final tier, the bond must be in the amount of \$250,000, which is for labs used in mass production with severe levels of contaminants present. The new law provides that the amounts may be aggregated. The new law became effective on July 15, 2008, 90 days after adjournment.

**LOUISIANA**

**HB 1067: Public Officials**

**INTRODUCED:** 03/31/2008

**ENACTED:** 07/01/2008

HB 1067 permits an affidavit from the obligee of record to stand in place of a promissory note for identification with a mortgage or act creating a vendor's privilege on immovable property if the note was lost or destroyed. The new law provides that neither the clerk of the court and ex officio recorder of mortgages, nor the surety on his or her bond, have any liability for any damages that resulted to any person or entity as a consequence of canceling the inscription of a

mortgage or vendor's privilege pursuant to such an affidavit. The legislation is identical to legislation that former Governor Blanco vetoed in 2007. The new law became effective on August 15, 2008.

**HB 1113: Insurer Deposits**

**INTRODUCED:** 03/31/2008

**ENACTED:** 06/25/2008

HB 1113 repeals the law that allows insurers to furnish surety bonds in lieu of certain deposits that the State requires. The prior law provided that cash or securities in an amount not less than \$20,000 or a surety bond in the amount of \$100,000 was required for alien or foreign insurers. The new law also increases the amount of cash or securities required from \$20,000 to \$100,000. The new law became effective on August 15, 2008.

**HB 1366/HB 1327: License Bond—Pharmacy Benefit Managers**

**INTRODUCED:** 05/08/2008

**ENACTED:** 06/21/2008

HB 1366 subjects pharmacy benefit managers to the existing law for third party administrators of insurance or self-insured plans for health and life benefits, including licensure and a \$100,000 surety bond. The bond is for the benefit and protection of all policyholders of the insurer and participants of the plan with whom the administrator contracts. **HB 1327** was similar, except that it would have required a fidelity bond. The new law became effective on August 15, 2008.

**SB 339: Receivership—Bonding Exemption**

**INTRODUCED:** 03/31/2008

**ENACTED:** 06/30/2008

SB 339 creates procedures for a cemetery to be placed into receivership. The new law provides that the receiver the court appoints is exempt from any bonding requirements. The new law became effective on August 15, 2008.

**SB 433: License Bond—Credit Repair Services Organizations**

**INTRODUCED:** 03/31/2008

**ENACTED:** 07/09/2008

SB 433 requires credit repair services organizations to file the bond required under existing law with the Attorney General instead of the Office of Financial Institutions. Cancellations now must be sent to the Attorney General as well. The new law also eliminates the option of a trust account in lieu of the bond. The new law became effective upon enactment.

**SB 444: Appeal Bond Exemptions**

**INTRODUCED:** 03/31/2008

**ENACTED:** 06/25/2008

SB 444 excludes political entities of the State, such as the Louisiana Insurance Guaranty Association, from appeal bond requirements. Existing law already exempts other public entities. The new law became effective on August 15, 2008.

**SCR 122: Farming Study**

**INTRODUCED:** 06/18/2008

**ADOPTED:** 06/22/2008

SCR 122 is a study resolution that the Legislature of Louisiana has adopted. It requests the Louisiana Law Institute to study the security interest priorities and contract right issues for farmers, lenders and grain elevators. The resolution states that the current indemnity requirements for grain dealers or cotton merchants are not adequate to provide proper protection in the event of insolvency. The dealers and merchants are required to indemnify grain and cotton producers. The resolution notes that “current law requires only a [\$50,000] surety bond in case of insolvency” and that the “insolvency of a grain elevator can often result in losses in the millions of dollars for producers.” The resolution notes that there are a number of parties involved in such businesses where there have been significant issues related to the items discussed above. The resolution became effective upon adoption.

Of note, SB 798 would have changed the bond requirement so that the bond amount would have been based on the dealer's purchases during the fiscal year. The bond would have had to be \$50,000 at a minimum and would be capped at \$400,000. The amount would be calculated as 8% of the aggregate dollar amount paid by the dealer for grain purchased in Louisiana during the dealer's last completed fiscal year, to the nearest hundred thousand dollars. The bill failed.

**MAINE**

**HB 1632: Miscellaneous Bond**

**INTRODUCED:** 03/19/2008

**ENACTED:** 04/16/2008

HB 1632 as introduced did not impact surety bonds, however as enacted, the new law requires telephone utilities to have \$250,000 in fixed assets and to post a surety bond in the same amount to ensure that the utility will be able to meet its financial obligations. The new law will not be applicable to telephone utilities that are already authorized to provide service on the effective date of the new law. The new law became effective on June 29, 2008, 90 days after adjournment.

**MARYLAND**

**HB 305: Permit Bond**

**INTRODUCED:** 01/24/2008

**ENACTED:** 04/08/2008

HB 305 authorizes the Howard County governing body to require permit holders for the installation of a multiuse septic system to post a performance bond before installing the system. The new law became effective on July 1, 2008.

**HB 363/SB 270: License Bond—Mortgage Lenders**

**INTRODUCED:** 01/28/2008

**ENACTED:** 04/08/2008

HB 363/SB 270 increases the amount of the license bond required for mortgage lenders, which under current law is based on the lender's aggregate principal amount of loans. The bill eliminated the base amount of the bond (\$15,000), which is required for license applicants who have not conducted any loans in the 3 years prior to the application. The new law became effective on June 1, 2008, requiring increased bond amounts as follows:

<b>Loan Volume</b>	<b>Current Bond Requirement</b>	<b>Increased Amount</b>
\$3 million or less	\$25,000	\$ 50,000
\$3 to \$10 million	\$50,000	\$100,000
\$10 million	\$75,000	\$150,000

**HB 407: Miscellaneous Bond—Inspection Agencies**

**INTRODUCED:** 01/28/2008

**ENACTED:** 05/13/2008

HB 407 would have required authorized inspection agencies for boiler and pressure vessels to submit a surety bond in the amount of \$5,000. As amended and enacted, the new law requires the Commissioner of Labor and Industry to adopt regulations for insurance requirements that are based on the national requirements for such inspection agencies. The new law became effective on October 1, 2008.

**HB 866/SB 650: Miscellaneous Bond**

**INTRODUCED:** 02/06/2008

**ENACTED:** 05/13/2008

HB 866/SB 650 is an enforcement measure concerning the bond requirement for employment agencies. Current law requires a "penal bond" in the amount of \$7,000. The new law authorizes the Commissioner of Labor and Industry (Commissioner) to investigate complaints that an agency failed to post the required bond. If such a failure has occurred, then the Commissioner will issue a notice to the agency requiring compliance or the agency will have to provide a reason for why no bond is in place. If the agency failed to post the bond after such a notice is issued, penalties in the amount of \$1,000 per violation may be imposed on the agency. The new law became effective on October 1, 2008.

**HB 1139: Public Officials**

**INTRODUCED:** 02/07/2008

**ENACTED:** 04/24/2008

HB 1139 eliminated the office of dog warden in Calvert County, for which a surety bond was required conditioned on the faithful performance of his or her duties. The law also required a bond from all deputy dog wardens. With the elimination of these offices, the bond requirement also was eliminated. SFAA did not oppose this bill because it repealed the law for reasons unrelated to the bond requirement. The new law became effective on October 1, 2008.

**MASSACUSETTS**

**HB 5018: Public Officials**

**INTRODUCED:** 07/29/2008

**ENACTED:** 08/12/2008

HB 5018 creates the Massachusetts Clean Energy Technology Center (Center) for the promotion of clean energy technologies and the development of jobs in this sector. The new law requires the officers and employees of the Center to post a bond if such persons have access to the Center's cash or securities. The bond has to be in the amount and "with such surety" as the Center's board prescribed. Blanket or schedule bonds will be accepted. The bill was declared an emergency measure, which allowed it to become effective upon enactment.

**SB 53: Public Officials**

**INTRODUCED:** 01/10/2007

**ENACTED:** 12/22/2008

SB 53 establishes a regional education, training and skills center in the city of Taunton. The new law requires the treasurer of the Board of Directors (Board) for the new education center to post

a bond for his or her faithful performance, in the form and at least in the amount that the Department of Revenue (Department) would require. The Board has the authority to fix the amount of the bond so long as it is at least in the amount that the Department requires. The new law becomes effective 90 days after enactment on March 24, 2009.

**SB 2344: Public Officials**

**INTRODUCED:** 09/26/2007

**ENACTED:** 05/13/2008

SB 2344 creates the Whittin Reservoir Watershed District within the Town of Douglas. The new law requires the District's treasurer to post a surety bond in the amount that the District's Management Committee determines to be sufficient. The Commissioner of Revenue has to approve the form. Failure to post the bond within ten days after election or appointment to this office or failure to renew the bond within ten days of its expiration precludes the treasurer from taking office or result in his or her removal from office. The new law became effective upon enactment.

**SB 2768: Performance Bond**

**INTRODUCED:** 01/09/2008

**ENACTED:** 07/02/2008

SB 2768 requires a performance bond for guaranteed energy savings contracts. The bond must be in the amount of 100% of the contract value from a surety company licensed in the Commonwealth and listed on Circular 570 of the U.S. Treasury Department. Such contracts involve the procurement of energy management services in order to achieve energy savings at public facilities. The new law became effective 90 days after enactment on October 2, 2008.

**SB 2786: Public Officials**

**INTRODUCED:** 07/07/2008

**ENACTED:** 10/15/2008

SB 2786 creates the Walpole Economic Development and Industrial Corporation (Corporation) for the Town of Walpole and provides for a board of directors. The new law requires each of the board members to post a surety bond from a surety company licensed in the Commonwealth. The bond has to be in the amount of \$50,000 and is conditioned on the faithful performance of the duties of the office. Each surety bond has to be approved by the town counsel and filed in the office of the state secretary. The new law also requires the treasurer of the board to post a bond in an amount that the Corporation's board will determine. The surety issuing the bond has to be licensed in the Commonwealth. The new law became effective upon enactment.

**MICHIGAN**

**SB 1061: Captive Insurer Regulation**

**INTRODUCED:** 01/24/2008

**ENACTED:** 03/13/2008

SB 1061 regulates special purpose financial captive (SPFC) insurance companies. Of note, the new law requires third parties contesting the decision of the Commissioner of Financial and Insurance Regulation in connection with a SPFC insurance company to post a bond. Such a bond serves to protect the interests of the holders of the SPFC securities and policyholders. The bond may not be less than 15% of the total amount of the securitized transaction. The new law became effective upon enactment.

## **MINNESOTA**

### **SB 2930: Registration Bonds—Debt Management Service Providers**

**INTRODUCED:** 02/21/2008

**ENACTED:** 04/21/2008

SB 2930 permits a temporary waiver of any requirements for debt management service providers, including registration and bonding requirements. The new law became effective on April 22, 2008.

## **MISSISSIPPI**

### **HB 892: Miscellaneous Bond**

**INTRODUCED:** 02/04/2008

**ENACTED:** 05/12/2008

HB 892 requires certified professional evaluators for individual on-site wastewater disposal systems to provide proof of an errors and omissions policy or “surety” in effect with liability limits of at least \$50,000 per occurrence and at least \$100,000 in the total aggregate amount. Such evaluators must be a professional engineer, a professional geologist, a professional soil classifier, or a person with other similar skills. The new law became effective on July 1, 2009.

### **HB 919: Surety Bond—Preneed Funeral Contracts**

**INTRODUCED:** 02/04/2008

**ENACTED:** 05/10/2008

HB 919 requires persons selling preneed contracts to post a surety bond in the amount of \$250,000. Such persons already are required to register with the Secretary of State (Secretary). The new law provides that the bond would be conditioned "as provided by law." Further, the Secretary is permitted to adopt rules requiring a bond in a greater amount according to the size of the seller's business. The new law became effective upon enactment.

### **HB 1388: License Bond—Manufactured Homes**

**INTRODUCED:** 02/04/2008

**ENACTED:** 04/08/2008

HB 1388 authorizes the Commissioner of Insurance to adopt regulations to establish bonding and/or insurance requirements in connection with the licensure of manufacturers, distributors, retailers, and transporters or installers of factory-built homes. The new law became effective on July 1, 2008.

## **MISSOURI**

### **No Commercial Surety Enactments in 2008**

## **MONTANA**

**Not in Session for 2008**

## **NEBRASKA**

### **LB 846: Tax Bond—Motor Fuel**

**INTRODUCED:** 01/10/2008

**ENACTED:** 04/21/2008

LB 846 provides that the surety bond currently required for motor fuel producers, suppliers, distributors, wholesalers, exporters, or importers must now secure compliance with a new tax, in addition to the current compliance requirements.. The new tax will be imposed on the wholesale price of gasoline that will be used for the State Highway Trust Fund. The new law became effective on July 17, 2008, three months after adjournment.

**LB 853: Viatical Settlement Providers**

**INTRODUCED:** 01/11/2008

**ENACTED:** 04/17/2008

LB 853 requires viatical settlement providers and brokers to provide evidence of financial responsibility, which could be in the form of a surety bond. The bond must be in the amount of \$250,000 and issued by an insurance company authorized to such bonds in the State. Surety bonds must be in the favor of the State and authorize the Director of Insurance to make recovery on behalf of any person in the State who sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices of the viatical settlement provider or broker. Other forms of such evidence that will be accepted include cash, certificates of deposit, or securities, or any combination of these. The new law is based on recent model legislation from the National Association of Insurance Commissioners. The new law became effective on July 17, 2008, three months after adjournment.

**LB 1001: Tax Bond**

**INTRODUCED:** 01/16/2008

**ENACTED:** 04/16/2008

LB 1001 revises the current tax bond requirement for contractors to expand its coverage. Currently, the bond is required prior to commencing work on a contract and is conditioned to guarantee the payment of all taxes will be paid when due, including contributions due under the Employment Security Law that accrue in connection with the contract. The new law expands this guarantee to cover any withholding required under the Nebraska Revenue Act of 1967. Existing law requires that the bond be in an amount not less than \$5,000. The new law also provides that failure to comply with the existing law or releasing withholdings to a subcontractor without clearance from the Department of Revenue makes the contractor liable for the full amount of the bond that the subcontractor is required to post. The contractor may reduce his or her liability to the extent that he or she can prove that the subcontractor has paid the required taxes and contributions to the State and its political subdivisions. The new law became effective on January 1, 2009.

**NEVADA**

**Not in Session for 2008**

**NEW HAMPSHIRE**

**HB 1302: License Bond—Charitable Game Operators**

**INTRODUCED:** 01/02/2008

**ENACTED:** 06/27/2008

HB 1302 increases the amount of the license bond required of gaming operators in New Hampshire from \$20,000 to \$300,000. The new law became effective on June 30, 2008.

**HB 1351: Miscellaneous Bond**

**INTRODUCED:** 01/02/2008

**ENACTED:** 06/06/2008

HB 1351 provides that off-highway recreational vehicle (OHRV) and snowmobile registration agents may post a surety bond when certain violations of the agreement between the agent and the Fish and Game Department have been committed. The bond may be posted in lieu of the agreement being terminated when the violation involves the handling and remittance of state funds. The bond has to be issued by a corporate surety licensed in the State and it has to guarantee the payment of all State funds collected as a result of registrations that the agent issued for the State. Such a bond already exists under current law for license agents who issue licenses, stamps, tags, permits for hunting and fishing. The new law became effective upon enactment.

**HB 1641: Miscellaneous Bond—Motor Fuel Distributors**

**INTRODUCED:** 01/23/2008

**ENACTED:** 06/06/2008

HB 1641 increases the amount of the bond for motor fuel distributors from twice the amount of the distributor's monthly road toll liability to three times that amount. Existing law provides that the bond cannot be less than \$10,000, which the new law does not change. The new law became effective on July 1, 2008.

**SB 309: Promoter's Bond**

**INTRODUCED:** 01/02/2008

**ENACTED:** 06/26/2008

SB 309 expands existing law concerning boxing and wrestling matches to regulate mixed martial arts and kickboxing. Promoters of mixed martial arts and kickboxing events now must post the surety bond required of boxing and wrestling match promoters. Current law authorizes the Boxing and Wrestling Commission to require promoters to post a surety bond in the amount it determines is appropriate. The new law became effective upon enactment.

**NEW JERSEY**

**SB 521: Permit Bonds—Vehicle Sales**

**INTRODUCED:** 01/08/2008

**ENACTED:** 09/06/2008

SB 521 reduces from \$500,000 to \$10,000 the amount of the surety bond required to conduct an off-site sale of recreational vehicles (RVs). The bill did not change the bond amount required for an off-site motor vehicle sale, although as introduced, it would have reduced the bond amount to \$10,000 for such a sale as well. The new law provides that if the surety bond is cancelled before the end of the off-site sale for either motor vehicles or RVs, the dealer has to obtain and file a replacement surety bond immediately with the Chief Administrator of the Motor Vehicle Commission. The new law became effective upon enactment.

**NEW MEXICO**

**HB 199: License Bond**

**INTRODUCED:** 01/17/2008

**ENACTED:** 02/28/2008

HB 199 repeals the existing contractors' license bond under which the bond amounts are small and based on the size of projects done, and replaces it with a \$10,000 bond from a corporate surety licensed in the State. Payments from the bond can be used only to cure code violations of a licensee. Claims against the bond must be made within two years following the final inspection or within two years of issue of a certificate of occupancy, whichever is earlier. The total

aggregate liability of the surety shall not exceed the face amount of the bond. There is a 30 day cancellation provision. The final language of the bill is significantly improved from the original bill draft. SFAA, AIA and CNA Surety worked on the bill text. The new law became effective on July 1, 2009.

## **NEW YORK**

### **Multiple Bills: Tax Bonds for Tax Review Proceedings**

New laws in New York require a bond in connection with review processes for tax assessments made by local authorities. 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 in the amount of the amount of the taxes, including interest and penalties, in addition to the costs bond. Anyone disputing a denied refund claim is subject to the same bond requirements described above. The new laws for 2008, which became effective upon enactment, are as follows: for local real estate transfer taxes—**AB 8831** (Town of Northeast); and for local hotel and motel taxes—**SB 7050** (Clinton County).

### **SB 8708: Self-Insurer Group Trusts for Workers' Compensation Plans**

**INTRODUCED:** 06/23/2008

**ENACTED:** 06/30/2008

SB 8708 was introduced and passed both houses at the 11<sup>th</sup> hour of the session before the legislature recessed for the rest of the year. The new law imposes stricter financial regulations on group self-insurers for workers' compensation plans, requiring audited financial statements on at least an annual basis. The group trust also is required to hire an administrator that has to obtain a license and post a bond in the amount of \$500,000 for each group self-insurer administered. The Chair of the Workers' Compensation Board is able to set the amount of the bond based on its cost and availability in lieu of a bond in the amount of \$500,000 for each group administered. The new law allows the Chair to recover any recoveries or penalties for violations that are assessed against the administrator according to the law's provisions. The new law also creates a default offset fund and a task force on group self-insurance plans for workers' compensation. The new law described above became effective on October 30, 2008, 120 days after its enactment.

## **NORTH CAROLINA**

### **HB 738: License Bond—Profession Employer Organizations**

**INTRODUCED:** 03/15/2007

**ENACTED:** 07/28/2008

HB 738 changed the license bond amount for Professional Employer Organizations (PEO). Prior law required a surety bond or letter of credit in the amount of \$100,000. The new law requires a bond or a letter of credit in an amount equal to 5% of the PEO's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions during the previous year. The bond amount may not exceed \$500,000. The new law became effective on October 1, 2008.

### **HB 2353: License Bond—Irrigation Contractors**

**INTRODUCED:** 05/21/2008

**ENACTED:** 08/04/2008

HB 2353 regulates irrigation contractors through the new North Carolina Irrigation Contractors' Licensing Board (Board). The new law requires a license bond in the amount of \$10,000. Surety bonds or letters of credit will be accepted, and bonds have to be issued by companies licensed in the State. The bond is conditioned on compliance and is open to direct actions from persons claiming injuries resulting from a violation of the new law. The new law became effective on October 1, 2008.

**HB 2436: Medicaid Enrolled Providers**

**INTRODUCED:** 05/26/2008

**ENACTED:** 07/16/2008

HB 2436 allows the North Carolina Department of Health and Human Services to have discretion in requiring Medicaid-enrolled providers to provide a performance bond, letter of credit, or other financial instrument in an amount not to exceed \$100,000. Prior law required the bond as a condition of receiving Medicaid payments. The new law provides that the Department may require a bond when the provider has failed to demonstrate financial viability, if it is determined that “significant potential” for fraud and abuse existed, or if the Department determines that it is in the best interests of the Medicaid program. As introduced the bill would have ordered a study on the existing bond requirement but it was amended in the Senate. The new law became effective upon enactment.

**HB 2463: License Bond—Mortgage Servicers**

**INTRODUCED:** 05/26/2008

**ENACTED:** 08/17/2008

HB 2463 regulates mortgage servicers and subjects them to the same licensing, bond and qualification requirements as mortgage lenders. Existing law requires a surety bond in the amount of \$150,000. Cash or securities in the same amount are accepted, as is a financial statement demonstrating a net worth of \$250,000. Existing law already permits and gives priority to direct consumer claims. The new law became effective on January 1, 2009.

**HB 2499: Miscellaneous Bond**

**INTRODUCED:** 05/26/2008

**ENACTED:** 07/31/2008

HB 2499 eliminated a bond that was required in connection with a water emergency during a drought. The law provided for the diversion of water resources during the emergency to the affected area. The person controlling the water or sewage systems into which the water was diverted became liable for any loss or damages resulting from the placement of the temporary water lines for the diversion. That person had to post a bond that was conditioned on payment to any persons suffering a loss or damages. The new law became effective upon enactment.

**SB 741: Miscellaneous Bond—Unemployment Insurance Fund Contributions**

**INTRODUCED:** 03/14/2007

**ENACTED:** 08/03/2008

SB 741 requires cash, a surety bond, or an irrevocable letter of credit from non-profit organizations that elect to become liable for payments in lieu of contributions into the State's Unemployment Insurance Fund. Under existing law, organizations making such an election must do so for a period of not less than four calendar years. Surety bonds have to be from company licensed in the State and the bond has to remain in force for not less than two years and has to be

renewed, subject to the approval of the Employment Security Commission. The bond serves to secure the payments the organization makes. The new law became effective upon enactment.

## **NORTH DAKOTA**

**Not in Session for 2008**

## **OHIO**

### **HB 404: License Bond—Viatical Settlement Providers and Brokers**

**INTRODUCED:** 11/29/2007

**ENACTED:** 06/11/2008

HB 404 requires viatical settlement brokers and providers to post a license bond in the amount of \$250,000. The bond could be either a surety bond issued by an insurer licensed in the State, or a deposit of cash, a certificate of deposit, or securities. The surety bond must be in favor of the State. The bond has to authorize the Superintendent of Insurance to make recovery on behalf of any person in the State who sustained damages that resulted from an erroneous act, failure to act, conviction of fraud or conviction of unfair practices that were committed by a licensed viatical settlement provider or broker. The new law is based on recent model legislation from the National Association of Insurance Commissioners. The new law became effective 91 days after it was filed with the Secretary of State.

### **HB 545: License Bond—Short Term Lenders**

**INTRODUCED:** 04/29/2008

**ENACTED:** 06/02/2008

HB 545 regulates short-term lenders, requiring licensure and a surety bond from a surety or bonding company that is licensed in the State. The bond must be in the amount of at least \$100,000, unless the license applicant is a non-profit corporation, in which case the bond is \$50,000. The term of the bond runs concurrently with the license period. The new law became effective 91 days after it was filed with the Secretary of State.

### **HB 562: Fiduciary Bonds—University Treasurers**

**INTRODUCED:** 05/19/2008

**LINE ITEM VETO:** 06/24/2008

HB 562 allows the treasurer of the Board of Trustees (Board) for a number of universities to be insured in lieu of obtaining a bond. The law requires such treasurers to obtain a bond in an amount not less than the estimated amount of funds that may be in his or her control at any given time. The Board ultimately determines the amount required. For insurance policies, the new law requires the policy to be in the same amount of the bond, except that it allows for a reduction of the required amount by the amount of the deductible. The universities are Bowling Green State, Central State, Cleveland State, Wright State, Youngstown State, and the universities of Akron, Cincinnati, and Toledo. The Governor's line item veto did not impact the provisions described above and so they will become law. The new law became effective 91 days after it was filed with the Secretary of State.

### **SB 247: Miscellaneous Bond**

**INTRODUCED:** 11/01/2007

**ENACTED:** 06/11/2008

SB 247 amends existing law concerning claims against a credit union. The new law provides that if any member, depositor, individual, or group of individuals makes a claim to any share, share account, deposit, safe deposit box, property held in safekeeping, security, obligation, or other property in the credit union's possession or control without clear authority to draw on or exercise any right or control with respect to the property, the credit union is not required to recognize the claim unless there is a court order or a surety bond has been posted. The bond has to be in the form and amount that the credit union specifies with satisfactory sureties. It serves to indemnify the credit union against any liabilities, loss, and expenses the credit union might incur because of its recognition of the claim or because of its refusal, due to the claim, to honor or recognize any right to the property. The new law became effective 91 days after it was filed with the Secretary of State.

## **OKLAHOMA**

### **HB 2566: Miscellaneous Bond**

**INTRODUCED:** 02/04/2008

**ENACTED:** 06/02/2008

HB 2566 authorizes county commissioner boards to sell real property. Successful bids must be 25% greater than the certified appraised value of the real property in order to be considered. The new law requires successful bidders to post an "irrevocable bond or letter of credit." The bond must be in an amount equal to the purchase price and has to be submitted within 15 days of the award. Failure to submit a bond within this time period would be considered a rejection of the bid. The new law became effective on November 1, 2008.

### **HB 3187: Public Officials**

**INTRODUCED:** 02/04/2008

**ENACTED:** 05/12/2008

HB 3187 creates the Oklahoma Oilseed Commission (Commission). The new law requires the Commission to provide surety bonds for each of its members handling funds for the Commission. The Department of Central Services will determine the amount of the bond required. The new law became effective on November 1, 2008.

### **SB 565/SB 1980: Viatical Settlement Providers and Brokers**

**INTRODUCED:** 02/05/2007

**ENACTED:** 06/02/2008

SB 565 requires viatical settlement providers and brokers to post a \$50,000 bond issued by an insurer licensed in the State. In lieu of a bond, the law provides that cash, a certificate of deposit, securities or an errors and omissions insurance policy are acceptable. Any of these financial instruments, including the surety bond, may be used in combination to meet the new law's requirements. As introduced, SB 565 did not impact bonding. The bonding provisions were added at the 11<sup>th</sup> hour of the session during a conference committee. Originally, **SB 1980** would have enacted the NAIC model law for viatical settlement providers and brokers, which contains a \$250,000 bond requirement. The bill was amended and as enacted, SB 1980 grants rulemaking authority to the Insurance Commissioner for requiring a bond and it also authorizes him or her to set the amount. Since both SB 565 and SB 1980 have been enacted with conflicting bond requirements, SFAA will contact the Insurance Commissioner to seek clarification. The new laws became effective on November 1, 2008.

### **SB 1428: Insurance Service Warranty Association**

**INTRODUCED:** 02/04/2008

**ENACTED:** 06/02/2008

SB 1428 requires service warranty associations to post a surety bond in an amount equal to 5% of the gross premium received on the sale of service warranties for all service contracts issued and in force in the State, less claims paid. In no event may the bond be less than \$25,000. As introduced, the bill did not impact bonding. It was amended in a conference committee to include the bond requirement noted above. Similar legislation carried over from 2007 under **HB 1963/HB 1680**, which failed in 2008. The new law became effective on July 1, 2009.

**SB 1697: Reclamation Bonds**

**INTRODUCED:** 02/04/2008

**ENACTED:** 05/16/2008

SB 1697 creates a new permit requirement for limited mining operations, in which the site is limited to two acres. A reclamation bond in the amount of \$3,500 is required as a condition of obtaining the permit. The new law became effective upon enactment.

**SB 1765: Financial Assurance—Geologic Storage of Carbon Dioxide**

**INTRODUCED:** 02/04/2008

**ENACTED:** 06/03/2008

SB 1765 provides for the geologic storage of carbon dioxide. The new law requires the State Regulatory Agency to promulgate rules that would establish requirements for “appropriate and sufficient financial sureties as may be necessary.” Such rules are for the purpose of regulating the drilling, operation, and the well plugging, abandonment and removal of surface buildings and equipment of the storage facility to protect the facility against pollution, invasion, and the escape or migration of carbon dioxide. The new law also provides that upon the issuance of the Certificate of Completion of Injection Operations, any of the operator's performance bonds that were posted shall be released. The new law became effective upon enactment.

**SB 1766: Public Officials**

**INTRODUCED:** 02/04/2008

**ENACTED:** 05/02/2008

SB 1766 eliminated the office of “secretary-treasurer” from the board of directors (Board) of the Oklahoma Conservation Commission (Commission). The secretary-treasurer was required to post a surety bond. The Board still will have a “treasurer,” but there is no bond requirement. The new law became effective upon enactment.

**ORGEON**

**Not in Session for 2008**

**PENNSYLVANIA**

**HB 1152: Uniform Commercial Code**

**INTRODUCED:** 04/23/2007

**ENACTED:** 04/16/2008

HB 1152 conforms the Uniform Commercial Code to the Restatement of the Law of Surety by the American Law Institute. Among the several revisions, a surety now is further defined to include any "other secondary obligor" in addition to the existing definition as a "guarantor." The new law became effective 60 days from enactment on June 16, 2008.

**HB 2179: License Bond—Correspondent Lenders**

**INTRODUCED:** 02/06/2008

**ENACTED:** 07/08/2008

HB 2179 subjects correspondent lenders to the current license bond requirements for mortgage brokers, which requires a \$100,000 license bond. The new law also enhances the regulatory requirements for mortgage lenders, correspondents and brokers. It also creates a class of loan originators. The new law became effective 120 days from enactment on November 8, 2008.

**HB 2294: License Bond—Debt Management Services**

**INTRODUCED:** 03/05/2008

**ENACTED:** 10/09/2008

HB 2294 requires debt management service providers to be licensed and to post a \$50,000 surety bond and proof of liability or fidelity insurance. The surety bond must be from a surety company licensed in the Commonwealth and approved by the Department of Banking. The bond will run to the Commonwealth for the benefit of consumers damaged by the provider's or his or her agent's violation of the new law's provisions and/or the regulations implementing it. The fidelity policy has to insure against the dishonesty, fraud, theft or other malfeasance of the provider's employees, officers, directors or principals. The new law becomes effective 120 days from enactment on February 9, 2009.

**HB 2525: Miscellaneous Bond—Dog Kennels**

**INTRODUCED:** 05/13/2008

**ENACTED:** 10/09/2008

HB 2525 requires dog kennels to post a bond in the event that the dogs are removed for violations of the Commonwealth's animal cruelty laws and an administrative appeal is filed. The amount of the bond is based on the number of dogs removed and it has to be equal to the estimated cost of transportation, care and feeding them for 31 days while the dogs are impounded. The new law permits a deposit of cash in an amount equal to 10% of the amount required for the surety bond. The new law became effective 60 days from enactment on December 9, 2008.

**SB 1019: License Bond—Recreational Vehicles**

**INTRODUCED:** 07/03/2007

**ENACTED:** 10/08/2008

SB 1019 requires recreational vehicle dealers to post a \$30,000 license bond issued by a surety company licensed in the Commonwealth. The bond is conditioned on compliance with all of the Commonwealth's laws and regulations. Further, the bond will serve as security for any claim that an agency of the Commonwealth filed for moneys due, which includes but is not limited to unpaid taxes, fees, licenses, payment of a criminal penalty or fine after conviction or payment of a civil penalty or monetary amount after the entry of judgment. The new law became effective 60 days from enactment on December 8, 2008.

**SB 1020: Public Officials**

**INTRODUCED:** 07/03/2007

**ENACTED:** 07/09/2008

SB 1020 repeals existing law, which provides that the State Conservation Commission (Commission) shall provide for the execution of surety bonds for all employees and officers that

are entrusted with the Commission's funds or property. The new law became effective 60 days from enactment on September 9, 2008.

**SB 1063: Public Officials**

**INTRODUCED:** 09/10/2007

**ENACTED:** 07/02/2008

SB 1063 allows local governments to jointly collect taxes. Under prior law, the tax officers of each governmental unit collected its own taxes and the local tax officers had to be bonded. The bond had to be equal to the maximum amount of taxes that may be in the officer's possession at any given time. Under the new joint tax collection procedures, a tax committee will be formed and the bond requirements for the tax officers collecting taxes for the group of public entities are almost identical to the prior bond requirements for tax officers of a local governmental unit, except for the amount required. The bond may be in an amount equal to the maximum amount of taxes that may be in the officer's possession at any given time as provided under prior law. Alternatively, the new law allows the tax committee to set the bond amount so that it will be sufficient to secure the officer's financial responsibility in combination with fiscal controls, insurance and other risk management and loss prevention measures that tax collection district uses. The new law became effective upon enactment.

**RHODE ISLAND**

**HB 7337: License Bond**

**INTRODUCED:** 02/05/2008

**ENACTED:** 07/05/2008

HB 7337 eliminates the State's athlete agent laws and enacts the Uniform Athlete Agent Act. In doing so, the new law eliminates the bonding requirements in place under the prior law. The bill became law without the Governor's signature and became effective upon enactment.

**HB 7985/SB 2743: Court Bond—Guardians**

**INTRODUCED:** 02/26/2008

**ENACTED:** 07/05/2008

HB 7985/SB 2743 changes current law to permit waiver of surety on the guardian's bond regardless of the value of the ward's estate. Prior law required a bond for estates in which that value was \$10,000 or more. SFAA worked with the AIA to defeat the bill, but it was pushed through the Senate at the 11<sup>th</sup> hour of the session. The bill became law without the Governor's signature and became effective upon enactment.

**SB 2509: Caps on Appeal Bonds**

**INTRODUCED:** 02/26/2008

**ENACTED:** 07/08/2008

SB 2509 caps the supersedeas bond at \$50 million for all appellants collectively regardless of the value of the judgment in order to stay the execution of a judgment related to the Master Settlement Agreement. The bill became law without the Governor's signature and became effective upon enactment.

**SB 2067: License Bonds—Travel Agents**

**INTRODUCED:** 01/15/2008

**ENACTED:** 06/06/2008

SB 2067 eliminates the licensing requirements for travel agents under which a \$10,000 surety bond was required. As such, this bond requirement also was eliminated. The repeal occurred for reasons unrelated to the surety bond. The repeal became effective upon enactment.

## **SOUTH CAROLINA**

### **No Commercial Surety Enactments in 2008**

## **SOUTH DAKOTA**

### **HB 1008: Title Abstractors Registration Bond**

**INTRODUCED:** 01/08/2008

**ENACTED:** 02/12/2008

HB 1008 simplifies the bond amount required for abstractors of title in connection with registration. Under prior law, there was a three-tiered bond amount, based on the county population. The new law now requires that if the county population is less than 15,000, the bond amount is \$25,000, and if the population is over 15,000, then the bond amount is \$50,000. The new law became effective on July 1, 2008.

### **HB 1009: Money Transmitters License Bond**

**INTRODUCED:** 01/08/2008

**ENACTED:** 02/12/2008

HB 1009 revises the existing law concerning money transmitters. Under prior law, a cash deposit or securities was required of \$100,000, plus \$5,000 per each additional location in the State, with a maximum deposit of \$250,000. In lieu of the deposit or securities, a surety bond could be posted in the same amount. Under the new law, a surety bond, letter of credit or other similar security is required in the amount of \$100,000. Instead of basing any increase on the number of locations, the new law would permit the Director of the Division of Banking (Director) to increase the amount of the bond or security in the event of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria. The new law also increases the maximum amount of the bond or security from \$250,000 to \$500,000. Under existing law, the surety's liability would be limited to the penal sum of the bond and the bond is cancellable. The new law permits direct actions on the bond or security from any claimant against the licensee. The Director also would be permitted to take action against the bond or security. The new law became effective on July 1, 2008.

### **SB 44: License Bond—Grain Dealers**

**INTRODUCED:** 01/08/2008

**ENACTED:** 03/12/2008

SB 44 changes the amount of the surety bond required in connection with licensure as a grain dealer, re-named grain buyers under the new law. Under prior law, the surety bond must be in the amount of \$50,000. The new law creates two license classifications, Class A and Class B. The amount of the bonds for Class A and Class B licenses is based on a rolling average of the dollar amount of grain that the license applicant purchased in South Dakota during the last three calendar years. For new grain buyers, the bond amount is based on their projected purchases. Grain buyers with less than three years experience will base the amount of their bond on the average actual purchases for all of its previous years of experience as a buyer. The bond is applicable to all grain purchases for all of the grain buyer's business locations.

For a Class A license:

<b>Dollar Amount of Grain Purchased</b>	<b>Bond Requirement</b>
< \$2,000,000	\$ 50,000
\$ 2,000,001 - \$ 10,000,000	\$ 75,000
\$10,000,001 - \$ 50,000,000	\$100,000
\$50,000,001 - \$100,000,000	\$200,000
> \$100,000,000	\$300,000

For a Class B license:

<b>Dollar Amount of Grain Purchased</b>	<b>Bond Requirement</b>
< \$2,000,000	\$50,000
\$2,000,001 - \$10,000,000	\$75,000

The new law became effective on July 1, 2008.

#### **SB 157: License Bond—Mortgage Brokers**

**INTRODUCED:** 01/17/2008

**ENACTED:** 03/13/2008

SB 157 permits a mortgage brokerage to obtain one bond to satisfy the bond requirement for individual applicants that it employs. Under existing law, individual applicants for a mortgage broker's license must post a \$25,000 bond. The new law became effective on July 1, 2008.

#### **SB 85: Trust Companies**

**INTRODUCED:** 01/15/2008

**ENACTED:** 03/11/2008

SB 85 revises the law concerning trust companies which requires that either a surety bond, fidelity bond, or directors and officers insurance policy be purchased for the protection of its fiduciary clients. The new law changes this so that the option of a surety bond has been eliminated and also that both a fidelity bond and a D&O insurance policy would be required. The new law became effective on July 1, 2008.

### **TENNESSEE**

#### **HB 2633: License Bonds—Sports Promoters**

**INTRODUCED:** 01/11/2008

**ENACTED:** 06/13/2008

HB 2633 requires boxing, mixed martial arts, and kickboxing contest promoters to post a license bond in the amount of \$25,000 from a corporate surety company licensed in the State. Cash or other security also will be accepted. The bond is conditioned on the faithful performance under the law. The new law became effective on July 1, 2008.

#### **HB 2809: License Bond—Motor Vehicle Dealers**

**INTRODUCED:** 01/16/2008

**ENACTED:** 04/10/2008

HB 2809 increased the amount of the license bond required for motor vehicle dealers from \$25,000 to at least \$50,000. The new law prohibits the use of letters of credit. The current law permitting the use of a certificate of deposit was maintained. The new law became effective on July 1, 2008.

**SB 3752: Miscellaneous Bond—Health Clubs**

**INTRODUCED:** 01/17/2008

**ENACTED:** 04/21/2008

SB 3752 requires health clubs to post a surety bond in the amount of \$25,000 with the Department of Commerce and Insurance. The new law provides that if the financial condition of the club is insufficient to cover its financial obligations, the bond may be increased up to \$200,000. The new law permits the health club to sell memberships prior to its opening. Buyers are permitted to make direct claims on the bond if the club fails to open. The new law became effective upon enactment. This is the first of two bills enacted regarding health clubs. The second new law is described below.

**SB 4175: Miscellaneous Bond—Health Clubs**

**INTRODUCED:** 02/01/2008

**ENACTED:** 06/05/2008

SB 4175 requires health clubs to post a bond in the amount of \$25,000 with the Department of Commerce and Insurance, which may be in the form of a surety bond. Cash, a certificate of deposit, and securities also would be accepted. The bond must be maintained for two years following the club's ceasing to do business in the State. The new law provides that the Attorney General has the right to request that the total amount of the bond be awarded to the State for consumer restitution. The new law became effective upon enactment.

**SB 3590: License Bond—Public Automobile Auctioneers**

**INTRODUCED:** 01/17/2008

**ENACTED:** 04/10/2008

SB 3590 requires public automobile auctioneers to be licensed and post a surety bond in the amount of \$50,000 from a licensed bonding company. Such auctioneers conduct auctions that are open to the public. Liability insurance in the amount of \$500,000 also is required. The new law became effective on January 1, 2009.

**TEXAS**

**Not in Session for 2008**

**UTAH**

**HB 125: Public Officials**

**INTRODUCED:** 01/21/2008

**ENACTED:** 03/17/2008

HB 125 permits a regional grazing board to hire a treasurer and requires the treasurer to post a surety bond. If a corporate surety bond were posted, then it would have to be in the amount of \$5,000. If a personal bond were posted, then it would have to be in the amount of \$10,000. The new law became effective on May 5, 2008.

## **HB 159: Professional Employer Organizations**

**INTRODUCED:** 01/25/2008

**ENACTED:** 03/18/2008

HB 159 requires Professional Employer Organizations (PEOs) to maintain a minimum working capital of \$100,000 or post a bond with a minimum value of \$100,000. The bond would serve to secure the payment of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the PEO does not make the payment when due. The new law also provides that a "covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bond, surety bond, employer's liability not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond." These provisions are based on model legislation that has been introduced and enacted in other states in the past few sessions. The new law became effective on May 5, 2008.

## **VERMONT**

### **No Commercial Surety Enactments in 2008**

## **VIRGINIA**

### **HB 96/SB 359: Miscellaneous Bond—Unemployment Compensation**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/04/2008

HB 96/SB 359 subjects Indian tribes to the same benefit and tax payment laws as non-profit and governmental entities. Tribes choosing to fund employee benefits through payments into a fund in lieu of taxes are required to post a surety bond or make a deposit of cash or securities under the new law. The new law became effective upon enactment.

### **HB 137/HB 354/SB 356: Textbook Purchasing Contracts**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/07/2008

HB 137/HB 354/SB 356 eliminated the surety bond that the Board of Education (Board) required in connection with contracts with publishers of textbooks. The bond amount was not less than \$1,000 and not more than \$20,000 and the bond was conditioned upon the publisher's performance of all of the terms and conditions of the contract and payment of any liquidated damages that may be proved as a result of the violation of the contract's terms and conditions. The new law became effective upon enactment.

### **HB 656/SB 592: Miscellaneous Bond—Animals Used in Fighting Matches**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/11/2008

HB 656/SB 592 expands existing law concerning anti-dog fighting laws so that it is applicable to all animals. The new law also creates a new bonding opportunity. The new law provides that if an animal is confiscated because it has been used in fighting matches, the court must require the animal to be forfeited to the locality. The animal's owner is permitted to contest the forfeiture and must post a surety bond with the locality for its cost of caring for the animal for a period of nine months under the new law. An additional bond will be required for each successive

nine-month period until the court made a final determination on the criminal charges. The new law became effective upon enactment.

**SB 566: Appeal Bonds—Appeal Withdrawal Procedures**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/27/2008

SB 566 provides for new court procedures for the withdrawal of an appeal, which may impact coverage under the appeal bond. Under the new law, any party appealing a civil case from the general district courts can withdraw the appeal at any time if the required appeal bond has not been filed. If the appeal bond is in place, and the appeal is perfected, the appeal can be withdrawn only through a petition to the circuit (appellate) court and through a hearing in which any party can object to the withdrawal. Under the new law, if the appeal is withdrawn through a petition to the circuit court, the court is given authority to determine whether any party is entitled to additional relief, including attorneys' fees. SFAA sought clarification of this legislation to the effect that if there is no objection to the appeal in the circuit court, the bond should be returned and the result should be the same as in the case in which the appeal was withdrawn before the bond was posted. The bill sponsor, however, thought that the bill was clear in that the parties that did not appeal or contest the withdrawal could petition for additional relief, including attorneys' fees and such costs would be disbursed from the cash bond posted, not the appeal bond. The new law became effective upon enactment.

**HB 999: Miscellaneous Bond—Abandoned or Cruelly Treated Animals**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/08/2008

HB 999 revises the current bond requirement for owners of animals that have been confiscated as a result of cruel treatment or abandonment. The new law provides that if the locality has not adopted an ordinance, the court may order the animal's owner to post a surety bond if the animal is held for more than 30 days that is equal to the cost of boarding the animal for a period of time not to exceed nine months. The new law provides that the bond shall not be forfeited if the owner is found to be not guilty of the violation. The new law became effective upon enactment.

**SB 149: License Bonds—Real Estate Settlement Agent**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/02/2008

SB 149 increases the amount of the license bond required under existing law for settlement agents from an amount not less than \$100,000 to an amount not less than \$200,000. The new law became effective upon enactment.

**SB 505: Public Officials**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/04/2008

SB 505 revises the town charter for Bowling Green. The new law authorizes the town council to take a surety bond from any officer, whether elected or appointed. The council must approve the bond and determine its amount. The bond is conditioned on the faithful performance of the duties of the office for which it was posted. The new law became effective upon enactment under emergency declarations.

**SB 545: Miscellaneous Bond—Cigarette Manufacturers**

**INTRODUCED:** 01/09/2008

**ENACTED:** 03/27/2008

SB 545 requires that "newly qualified nonparticipating tobacco manufacturers" to post a bond to be listed on the Virginia Tobacco Directory (Directory). The new law provides that "newly qualified nonparticipating manufacturers" are those who have not been listed previously in the Virginia Tobacco Directory. Such manufacturers may be required to post a bond in accordance with the new law for the first five years of their listing, or longer if they have been determined to pose an elevated risk for noncompliance. Nonparticipating manufacturers are those that are not participating in the Master Settlement Agreement as provided under existing law and instead have elected to escrow funds according to the schedule provided in the law. The bond also may be required under the new law's provisions if the Attorney General determined that nonparticipating manufacturers were an elevated risk for not complying with these financial obligations. For foreign nonparticipating manufacturers, the U.S. importer of the brand has to post the bond. The bond must be in the amount of \$50,000 or the amount of escrow the manufacturer is required to deposit as a result of its previous calendar year's sales in Virginia, whichever is greater. The bond must be payable to the Commonwealth and is conditioned on the faithful performance of the escrow requirements of the law. The new law became effective upon enactment.

## **WASHINGTON**

### **No Commercial Surety Enactments for 2008**

## **WEST VIRGINIA**

### **HB 4364: Motor Vehicle Dealer Bond**

**INTRODUCED:** 01/31/2008

**ENACTED:** 04/01/2008

HB 4364 increases the amount of the motor vehicle dealer license bond from \$10,000 to \$25,000. The new law became effective on June 8, 2008.

### **HB 4404: Medical Discount Provider License Bond**

**INTRODUCED:** 02/04/2008

**ENACTED:** 04/01/2008

HB 4404 requires discount medical plan organizations to post a surety bond in an amount not less than \$35,000. The bond must be in favor of the Insurance Commissioner for the benefit of anyone damaged by the organization's violation of the new law. An insurance company that is licensed in the State would have to issue the bond. The new law became effective on June 8, 2008.

### **HB 4692: Depository Bond**

**INTRODUCED:** 02/18/2008

**ENACTED:** 03/28/2008

HB 4692 provides an alternative to the depository bond requirements for public funds belonging to the State. Current law requires that eligible depositories are required to post a bond in the amount of \$10,000. The new law permits such banking institutions to place deposits in certificates of deposit. The law outlines the requirements for the certificates of deposit for the banking institution to be eligible to use them in lieu of bonds. The new law became effective on June 28, 2008.

**SB 292: Mortgage Lender Bond****INTRODUCED:** 01/22/2008**ENACTED:** 03/27/2008

SB 292 permits the Commissioner of Banking to make a claim against a mortgage lender's license bond for an unpaid civil administrative penalty or an unpaid examination invoice. Existing law permits direct consumer claims against the bond. The new law became effective on June 7, 2008.

**SB 704: Viatical Settlement Providers****INTRODUCED:** 02/18/2008**ENACTED:** 03/13/2008

SB 704 regulates viatical settlement providers and brokers, requiring licensure and evidence of financial responsibility through cash, cash equivalents or a surety bond. The bond would have to be issued by a surety company licensed in the State and would have to be in an amount of \$250,000. The Insurance Commissioner is permitted to accept proof that financial instruments that met the requirements of the new law have been filed with a state in which the applicant is licensed. The bond would have to be in the favor of the State and would have to authorize the Insurance Commissioner to make recovery on behalf of any person in this state sustaining damages that resulted from the erroneous acts, failure to act, conviction of fraud or conviction of unfair practices of the viatical settlement provider or broker. The new law is based on recent model legislation from the National Association of Insurance Commissioners. It became effective on May 29, 2008.

**WISCONSIN****SB 273: Miscellaneous Bond****INTRODUCED:** 09/25/2007**ENACTED:** 04/01/2008

SB 273 requires retail suppliers of liquefied petroleum gas to be licensed and maintain evidence of financial responsibility in the amount of \$1 million per occurrence with an annual aggregate of \$2 million. The funds will be used for compensating third parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas. For retailers who only fill tanks for the state DOT or only for containers for engine and recreational vehicle fueling systems, the limits are \$500,000 per occurrence with an annual aggregate of \$1 million. Acceptable forms of such evidence are a surety bond, an irrevocable letter of credit, or a commercial general liability insurance policy. Surety bonds must be issued by surety companies that are listed on the U.S. Department of the Treasury's Circular 570 as acceptable on Federal bonds. The retailer is required to provide 60 days notice to the Department of Commerce prior to cancelling or failing to renew the bond, letter of credit or insurance policy. The new law became effective on April 11, 2008.

**WYOMING****SB 44: Mortgage Broker Bonds****INTRODUCED:** 02/11/2008**ENACTED:** 03/12/2008

SB 44 amends the forfeiture requirements for the surety bond required under existing law for mortgage brokers and lenders. Currently, the law provides that a bond must be forfeited to persons suffering damages as a result of the mortgage broker's or lender's violation of applicable federal or state laws or regulations relating to mortgage brokering or mortgage lending. The new

law provides that the bond would have to be forfeited in an amount that would be sufficient to satisfy the violation or the entire penal sum of the bond if the violation exceeded that amount. Further, the new law specifies that the bonds have to be effective continuously unless the State Banking Commissioner (Commissioner) provides a written release. Bonds that the Commissioner had not previously released will expire two years after the date of the license's surrender, revocation or expiration. The new law became effective on July 1, 2008.