
A BILL FOR AN ACT

RELATING TO BAIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that bail and bail agents
2 provide an extraordinarily valuable service to law enforcement
3 and accused persons alike. The bail clause of the Eighth
4 Amendment of the United States Constitution embodies the long-
5 standing Anglo-American tradition that favors pretrial release
6 of accused persons. Pretrial release on bail frees up crowded
7 jail space and permits defendants to participate more fully in
8 their defense. Bail agents, backed by surety insurance
9 companies, make possible the pretrial release of more than two
10 million defendants annually, at no expense to the taxpayers, by
11 providing assurances that people charged with crimes will appear
12 as scheduled to answer those charges.

13 The legislature also finds that persons authorized to
14 apprehend bail fugitives have very broad common law powers to
15 arrest a person. To protect against abuses, many states have
16 enacted laws regulating the conduct of persons who apprehend
17 bail fugitives. Four states have banned the practice outright,



1 twelve others require licenses, and others restrict certain
2 types of conduct.

3 The purpose of this Act is to regulate the conduct of
4 persons who apprehend bail fugitives. This Act is primarily
5 directed towards presently unregulated bail fugitive recovery
6 persons. However, this Act is intended to also reach bail
7 agents who are already regulated in other aspects. This Act
8 also requires the discharge of surety only after a breach of one
9 or more conditions of bail set forth in sections 804-7.1 and
10 804-7.4, Hawaii Revised Statutes, or if the defendant remains
11 incarcerated for offenses other than the subject of the surety.

12 SECTION 2. Chapter 804, Hawaii Revised Statutes, is
13 amended by adding a new part to be appropriately designated and
14 to read as follows:

15 **"PART . BAIL FUGITIVE APPREHENSION**

16 **§804-A Definitions.** As used in this part, unless a
17 different meaning is required:

18 "Bail agent" means a person who represents a surety who
19 provides bail bond insurance as defined under section 431:1-210.

20 "Bail fugitive" means a defendant in a pending criminal
21 case who has been released from custody under a financially
22 secured appearance, cash, or other bond and has had that bond

1 declared forfeited, or a defendant in a pending criminal case
2 who has violated a bond condition whereby apprehension and re-
3 incarceration are permitted.

4 "Bail fugitive recovery person" means:

5 (1) A person who is provided written authorization by the
6 bail agent or depositor of bail, and is contracted to
7 investigate, surveil, locate, and arrest a bail
8 fugitive for surrender to the appropriate court,
9 correctional facility, or police department; or

10 (2) A person who is employed to assist a bail agent or
11 depositor of bail to investigate, surveil, locate, and
12 arrest a bail fugitive for surrender to the
13 appropriate court, correctional facility, or police
14 department.

15 "Depositor of bail" means a person or entity that has
16 deposited money or bonds to secure the release of a person
17 charged with a crime or offense.

18 "Law enforcement officer" has the same meaning as in
19 section 710-1000.

20 **§804-B Bail fugitive apprehension; qualifications.** (a)

21 No person, other than a law enforcement officer, shall be a

1 person authorized to apprehend a bail fugitive, nor be allowed
2 to arrest a defendant unless the person is:

- 3 (1) A bail agent;
- 4 (2) A depositor of bail;
- 5 (3) A private investigator licensed in the state of
6 Hawaii; or
- 7 (4) A bail fugitive recovery person who complies with the
8 following:
 - 9 (i) Be at least twenty-one years of age;
 - 10 (ii) Have no felony conviction within the last ten
11 years;
 - 12 (iii) Register with the attorney general;
 - 13 (iv) Submit to fingerprinting and background checks;
14 and
 - 15 (v) Comply with all laws while apprehending a bail
16 fugitive.

17 (b) Upon registration with the attorney general, bail
18 fugitive recovery persons shall carry on the person at all times
19 in the course of performing the person's duties under this part,
20 photographic identification cards attesting to registration.
21 The attorney general shall be responsible for registration and
22 issuing identification cards.

1 **§804-C Bail fugitive apprehension; documentation required.**

2 Before apprehending a bail fugitive, a bail fugitive recovery
3 person authorized to apprehend a bail fugitive shall have in the
4 person's possession proper documentation of authority to
5 apprehend issued by the bail agent or depositor of bail. The
6 document conferring authority to apprehend the bail fugitive
7 shall include the following:

- 8 (1) The name of the individual authorized to apprehend a
9 bail fugitive and any fictitious name, if applicable;
- 10 (2) The address of the principal office of the individual
11 authorized to apprehend a bail fugitive; and
- 12 (3) The name and principal business address of the bail
13 agency, surety company, or other party contracting
14 with the person authorized to apprehend a bail
15 fugitive.

16 At the time of surrendering the fugitive to the custody of the
17 chief of police, the chief's authorized subordinate or public
18 safety officer, the person authorized to apprehend a bail
19 fugitive shall produce satisfactory documentation asserting that
20 the surrendered person is a bail fugitive. The chief of police
21 and the director of public safety shall designate the sites
22 where surrender may occur. The police may refuse to accept



1 surrender if proper identification and documentation are not
2 presented.

3 **§804-D Bail fugitive apprehension; prohibited acts.** A
4 person authorized to apprehend a bail fugitive shall not:

5 (1) Represent the person in any manner as being a sworn
6 law enforcement officer or wear a badge or uniform
7 that a reasonable person might believe are those of a
8 government agency;

9 (2) Represent that documentation of authority to apprehend
10 issued by the bail agent or depositor of bail is an
11 arrest or search warrant or other document that a
12 reasonable person might believe was issued by a
13 government entity; or

14 (3) Enter an occupied residential structure without the
15 consent of the occupants who are present at the time
16 of the entry.

17 **§804-E Bail fugitive apprehension; notice to police.** An
18 individual authorized to apprehend a bail fugitive, prior to but
19 not more than three hours before attempting to apprehend the
20 bail fugitive, shall notify the county police department of the
21 intent to apprehend a bail fugitive in that jurisdiction by:



- 1 (1) Indicating the name of the individual authorized to
- 2 apprehend a bail fugitive in the jurisdiction; and
- 3 (2) Stating the name and approximate location of the bail
- 4 fugitive.

5 For the purposes of this section, notice may be provided to a
6 police department by telephone prior to the arrest.

7 **§804-F Penalty.** Any person who violates sections 804-B to
8 804-E or who hires an individual to apprehend a bail fugitive,
9 knowing that the individual is not authorized by section 804-B
10 to apprehend a bail fugitive, shall be guilty of a misdemeanor.

11 **§804-G Administration.** This part shall be administered by
12 the attorney general. The attorney general may adopt rules
13 under chapter 91 to implement this part."

14 SECTION 3. Section 804-14, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§804-14 Discharge of sureties.** Those who may have become
17 bail for anyone, may [~~at any time~~] discharge themselves, by
18 surrendering [~~him~~] the defendant to the custody of any [~~sheriff~~
19 ~~or~~] chief of police [~~or his~~], the chief's authorized
20 subordinate[-], or a public safety officer vested with arrest
21 powers pursuant to section 353C-4(a) only after a breach of one
22 or more conditions of bail as set forth in sections 804-7.1 and



1 804-7.4, or if the defendant becomes incarcerated for offenses
2 other than the subject of surety."

3 SECTION 4. Section 804-41, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§804-41 Discharge of surety.** [~~At any time before the~~
6 ~~breach of the condition of the bond, the~~] A surety may discharge
7 oneself by surrendering the principal into the hands of any
8 [~~sheriff or the~~] chief of police [~~or the sheriff's or~~], the
9 chief's authorized subordinate[-], or a public safety officer
10 vested with arrest powers pursuant to section 353C-4(a) only
11 after a breach of one or more conditions of bail as set forth in
12 sections 804-7.1 and 804-7.4, or if the defendant becomes
13 incarcerated for offenses other than the subject of surety."

14 SECTION 5. If any provision of this Act, or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act, which can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 6. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.

1 SECTION 7. In codifying the new part added to chapter 804,
2 Hawaii Revised Statutes, by section 2 of this Act, the revisor
3 of statutes shall substitute appropriate section numbers for the
4 letters used in designating the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on January 1, 2007.

Report Title:

Bail; Apprehension of Fugitives; Surrender

Description:

Regulates the conduct of persons who apprehend bail fugitives. Establishes qualifications. Establishes requirements and prohibits certain practices for fugitive apprehension. Establishes penalty for violations. Permits surrender of a defendant by a bail agent only if the defendant has violated a condition of bail or if he remains incarcerated for offenses other than the subject of the surety. (HB3014 HD1)

