

JAN 25 2006

S.B. NO. 2944

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# 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 play an extraordinarily valuable service to law enforcement and  
3 accused persons alike. The bail clause of the eighth amendment  
4 to the United States Constitution embodies the long-standing  
5 Anglo-American tradition that favors pretrial release of accused  
6 persons. Pretrial release on bail frees up crowded jail space  
7 and permits defendants to participate more fully in their  
8 defense. Bail agents, backed by surety insurance companies,  
9 make possible the pretrial release of more than two million  
10 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, including the use of force, breaking and  
16 entering, imprisoning a person, and transporting prisoners  
17 against their will over state lines, to name a few. For  
18 example, in Hawaii today, a group of career criminals hired by a



1 bail bond agent anywhere in the United States could legally  
2 break down the door of any home in Hawaii, storm in, and  
3 terrorize the occupants. This abuse of power happens across the  
4 country every year and, while it might make for commercially  
5 successful television entertainment, it has no place in the  
6 orderly administration of our bail laws. To protect against  
7 these abuses, many states have enacted laws regulating the  
8 conduct of persons who apprehend bail fugitives. Four states  
9 have banned the practice outright, twelve others require  
10 licenses, and others restrict certain types of conduct.

11 The purpose of this Act is to regulate, like the majority  
12 of states, the conduct of persons who apprehend bail fugitives.

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

16 **"PART . BAIL FUGITIVE APPREHENSION**

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

19 "Bail agent" or "bail bond agent" means a person who holds  
20 a certificate of completion pursuant to section 804-C, including  
21 one who represents a surety who provides bail bond insurance as  
22 defined by section 431:1-210.



1 "Bail fugitive" means a defendant in a pending criminal  
2 case who has been released from custody under a financially  
3 secured appearance, cash, or other bond and has had that bond  
4 declared forfeited, or a defendant in a pending criminal case  
5 who has violated a bond condition whereby apprehension and re-  
6 incarceration are permitted.

7 "Depositor of bail" means a person or entity that has  
8 deposited money or bonds to secure the release of a person  
9 charged with a crime or offense.

10 "Person authorized to apprehend a bail fugitive" means a  
11 person who is provided written authorization by the bail or  
12 depositor of bail, and is contracted to investigate, surveil,  
13 locate, and arrest a bail fugitive for surrender to the  
14 appropriate court, jail, or police department, and any person  
15 who is employed to assist a bail or depositor of bail to  
16 investigate, surveil, locate, and arrest a bail fugitive for  
17 surrender to the appropriate court, jail, or police department.

18 **§804-B Bail fugitive; authority to apprehend.** (a) No  
19 person, other than a law enforcement officer, shall be  
20 authorized to apprehend, detain, or arrest a bail fugitive  
21 unless that person meets one of the following conditions:

22 (1) The person is a:



- 1 (A) Bail fugitive recovery person; or
- 2 (B) Depositor of bail;
- 3 (2) Holds a certificate of completion issued pursuant to
- 4 section 804-C; or
- 5 (3) Is licensed as a private investigator in this State.
- 6 (b) This part shall not prohibit an arrest pursuant to
- 7 section 804-C.

8 **§804-C Bail fugitive apprehension; qualifications.** (a) A  
9 person authorized by section 804-B to apprehend a bail fugitive  
10 who engages in the arrest of a defendant shall comply with the  
11 following requirements:

- 12 (1) Be at least twenty-one years of age;
- 13 (2) Pass a written examination administered by the State;
- 14 (3) Not have been convicted of a felony or aggravated
- 15 misdemeanor;
- 16 (4) Not have been convicted of any offense in which a
- 17 dangerous weapon was used;
- 18 (5) Submit to fingerprinting and background check; and
- 19 (6) Comply with all laws while apprehending a bail
- 20 fugitive.

21 (b) Upon completion of any examination or training program  
22 required by this section, a person authorized by section 804-B



1 to apprehend a bail fugitive shall carry certificates of  
2 completion with the person at all times in the course of  
3 performing the person's duties under this part.

4 **§804-D Bail fugitive apprehension; documentation required.**

5 Before apprehending a bail fugitive, a person authorized by  
6 section 804-C to apprehend a bail fugitive shall have in the  
7 person's possession proper documentation of authority to  
8 apprehend issued by the bail agent or depositor of bail. The  
9 document conferring authority to apprehend the bail fugitive  
10 shall include the following:

- 11 (1) The name of the individual authorized by section 804-B  
12 to apprehend a bail fugitive and any fictitious name,  
13 if applicable;
- 14 (2) The address of the principal office of the individual  
15 authorized by section 804-B to apprehend a bail  
16 fugitive; and
- 17 (3) The name and principal business address of the bail  
18 agency, surety company, or other party contracting  
19 with the person authorized by section 804-B to  
20 apprehend a bail fugitive.



1           **§804-E Bail fugitive apprehension; prohibited acts.** A  
2 person authorized by section 804-B to apprehend a bail fugitive  
3 shall not:

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

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

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

16           **§804-F Bail fugitive apprehension; notice to police.** An  
17 individual authorized by section 804-B to apprehend a bail  
18 fugitive, prior to but not more than three hours before  
19 attempting to apprehend the bail fugitive, shall notify the  
20 county police department of the intent to apprehend a bail  
21 fugitive in that jurisdiction by:



- 1 (1) Indicating the name of an 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-G Penalty.** Any person who violates sections 804-B to  
8 804-F, or who conspires with another person to violate those  
9 sections, or who hires an individual to apprehend a bail  
10 fugitive, knowing that the individual is not authorized by  
11 section 804-B to apprehend a bail fugitive, shall be guilty of a  
12 misdemeanor.

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

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

18 "**§804-14 Discharge of sureties.** Those who may have become  
19 bail for anyone, may [~~at any time~~] discharge themselves, by  
20 surrendering [~~him~~] the defendant to the custody of any [~~sheriff~~  
21 ~~or~~] chief of police [~~or his~~], the chief's authorized  
22 subordinate[-], or a public safety officer vested with arrest



1 powers pursuant to section 353C-4(a) only after a breach of one  
2 or more conditions of the bond."

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 the bond."

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

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

21 SECTION 7. In codifying the new sections added by section  
22 2 of this Act, the revisor of statutes shall substitute





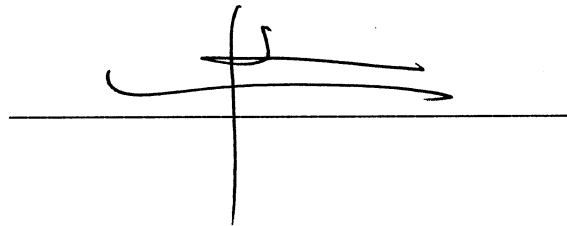
1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 8. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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**SB. NO. 2944**

**Report Title:**

Bail; Apprehension of Fugitives; Surrender

**Description:**

Regulates 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 bond agent only if the defendant has violated a condition of the bond.

