

---

---

## 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 bonding  
2 agents provide an extraordinarily valuable service to law  
3 enforcement and accused persons alike. The bail clause of the  
4 eighth amendment of the United States Constitution embodies the  
5 long-standing Anglo-American tradition that favors pretrial  
6 release of accused persons. Pretrial release on bail frees up  
7 crowded jail space and permits defendants to participate more  
8 fully in their defense. Bail bonding agents, backed by surety  
9 insurance companies, make possible the pretrial release of more  
10 than 2,000,000 defendants annually, at no expense to taxpayers,  
11 while providing assurances that people charged with crimes will  
12 appear as scheduled to answer those charges.

13           The legislature finds, determines, and declares that the  
14 simplicity, effectiveness and uniformity of bail procedures  
15 applicable to compensated sureties who are subject to the  
16 regulatory authority of the Hawaii division of insurance are  
17 matters of statewide concern. This Act also requires the



1 discharge of surety only after a breach of one or more conditions  
2 of bail set forth in sections 804-7.1 and 804-7.4, Hawaii  
3 Revised Statutes, or if the defendant remains incarcerated for  
4 offenses other than the subject of the surety.

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

8 **"PART . BAIL BOND AGENTS; SURETIES**

9 **§804-A Definitions.** As used in this part, unless the  
10 context otherwise requires:

11 "Bail agent" or "bail bond agent" means any person who  
12 furnishes bail for compensation in any court in this State and  
13 who is appointed by an insurer by power of attorney to execute or  
14 countersign bail bonds in connection with judicial proceedings.

15 "Bail agent" shall not include a person who is a full-time  
16 salaried officer or employee of an insurer or a person who  
17 pledges United States currency, a United States postal money  
18 order, a cashier's check, or other property as security for a  
19 bail bond in connection with a judicial proceeding, whether for  
20 compensation or otherwise.

21 "Bail fugitive" means a defendant in a pending criminal case  
22 who has been released from custody under a financially secured



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

5 "Bail insurance company" means an insurer engaged in the  
6 business of writing bail appearance bonds through bonding agents  
7 and is subject to regulation by the insurance commissioner of the  
8 department of commerce and consumer affairs.

9 "Compensated surety" means any person in the business of  
10 writing bail appearance bonds who is subject to regulation by the  
11 director of commerce and consumer affairs.

12 "Depositor of bail" means a person or entity that has  
13 deposited money, stocks, bonds, or other real or personal  
14 property to secure the release of a person charged with a crime  
15 or offense.

16 "Insurance Commissioner" or "commissioner" means the  
17 insurance commissioner of the State.

18 "On the board" means that the name of a compensated surety  
19 has been publicly posted or disseminated by a court as being  
20 ineligible to write bail bonds.

21 **§804-B Bail agent license; qualifications.** (a) No person  
22 shall qualify to be a bail bond agent unless the person is



1 licensed pursuant to this part and is appointed to represent an  
2 insurance company.

3 (b) No firm, partnership, association, or corporation shall  
4 be licensed as a bail bond agent.

5 (c) No person engaged as a law enforcement or judicial  
6 officer, corrections officer, or court clerk shall be licensed as  
7 a bail bond agent or bail agency.

8 **§804-C License required; expiration.** (a) No person may  
9 act, or offer or advertise as being able to act, as a bail bond  
10 agent unless the person is licensed pursuant to this part.

11 (b) Each licensee's license shall expire biennially on  
12 January 1 unless sooner suspended or revoked by the insurance  
13 commissioner. The insurance commissioner may suspend or revoke a  
14 bail bond agent license if the insurer for whom or on whose  
15 behalf the bail bond agent acts, notifies the insurance  
16 commissioner that the insurer has cancelled the licensee's  
17 authority to act for or on behalf of the insurer.

18 (c) The insurance commissioner shall prepare and deliver to  
19 each licensee an identification card showing the name, address,  
20 and classification of the licensee. The identification card  
21 shall clearly state that the person is a licensed bail agent.



1 (d) The insurance commissioner shall annually notify each  
2 bail bond agent in writing regarding changes to the state laws  
3 regarding the regulation of bail bond agents.

4 **§804-D Names.** (a) Any bail agent using an assumed name,  
5 including without limitation a trade name or fictitious name,  
6 under which the bail agent conducts business shall register the  
7 name with the insurance commissioner prior to using the assumed  
8 name.

9 (b) The insurance commissioner shall not accept  
10 registration of any name that is similar to another currently  
11 used by another licensed bail agent, that would tend to be  
12 misleading to the public, or that is identical or similar to the  
13 name of any insurance producer whose license has been revoked or  
14 suspended.

15 (c) Every bail agent licensee shall promptly file with the  
16 commissioner a written notice of any change in or discontinuation  
17 of the use of any name.

18 **§804-E License denial, suspension, revocation, or**  
19 **termination.** (a) The insurance commissioner may place on  
20 probation, suspend, revoke, refuse to continue or renew, or  
21 refuse to issue a bail agent license if the insurance  
22 commissioner finds any one or more of the following:



- 1 (1) Any incorrect, misleading, incomplete, or materially  
2 untrue information in the license application;
- 3 (2) Any cause for which issuance of the license could have  
4 been refused had it then existed and been known to the  
5 commissioner at the time of issuance;
- 6 (3) Violation of, or noncompliance with, any insurance law  
7 or violation of any lawful rule, order, or subpoena of  
8 the commissioner;
- 9 (4) Obtaining or attempting to obtain the license through  
10 misrepresentation or fraud;
- 11 (5) Improperly withholding, misappropriating, or converting  
12 to the licensee's or applicant's own use any moneys or  
13 property belonging to policyholders, insurers,  
14 beneficiaries, or others received in the course of the  
15 business of insurance;
- 16 (6) Misrepresentation of the terms of any actual or  
17 proposed insurance contract or application for  
18 insurance;
- 19 (7) Conviction of a felony or misdemeanor involving moral  
20 turpitude. For the purposes of this paragraph, "moral  
21 turpitude" shall include any sexual offense against a  
22 child;



- 1           (8) Commission of any unfair trade practice or fraud;
- 2           (9) The use of fraudulent, coercive, or dishonest practices
- 3                 or demonstrating incompetence, untrustworthiness, or
- 4                 financial irresponsibility in this state or elsewhere;
- 5           (10) Forgery of another's name on an application for
- 6                 insurance or to any document related to an insurance
- 7                 transaction;
- 8           (11) Cheating on an examination, including but not limited
- 9                 to improperly using notes or any other reference
- 10                material to complete an examination for an insurance
- 11                license;
- 12           (12) Failure to fully meet the licensing requirements; or
- 13           (13) Knowingly accepting insurance business from a person
- 14                 who is not licensed.
- 15           (b) The insurance commissioner shall deny, suspend, revoke,
- 16           or refuse to renew, the license of any person engaged in the
- 17           business of bail bond agent for any of the following reasons:
- 18           (1) Knowingly failing to comply with or knowingly violating
- 19                 any provisions of this part or of any proper order or
- 20                 rule of the insurance commissioner or any court of this
- 21                 State where the licensee knew or reasonably should have
- 22                 known of the provisions, order, or rule;



- 1 (2) Any activity prohibited in statute;
- 2 (3) Failure to satisfy, pay, or otherwise discharge a bail
- 3 forfeiture judgment after having the bail agent's name
- 4 placed on the board, for more than forty-five
- 5 consecutive days for the same forfeiture;
- 6 (4) Conviction of a felony, a guilty plea to a felony, or a
- 7 plea of nolo contendere to a felony within the ten
- 8 years preceding application for licensure, regardless
- 9 of whether the conviction or plea resulted from conduct
- 10 in or conduct related to the bail bond business;
- 11 (5) Failure to report, to preserve without use and retain
- 12 separately, or to return collateral taken as security
- 13 on any bond to the principal or depositor of the
- 14 collateral;
- 15 (6) Failure to pay a final, nonappealable judgment award
- 16 for failure to return or repay collateral received to
- 17 secure a bond;
- 18 (7) Hiring, contracting with, or paying compensation to any
- 19 individual for bail recovery services in violation of
- 20 the provisions of part;
- 21 (8) Continuing to execute bail bonds in any court in this
- 22 state while on the board, where the bail forfeiture





1 judgment that resulted in being placed on the board has  
2 not been paid, stayed, vacated, exonerated, or  
3 otherwise discharged; or

4 (9) Paying, directly or indirectly, any commission, service  
5 fee, brokerage, or other valuable consideration to any  
6 person selling, soliciting, or negotiating bail within  
7 this state unless, at the time the services were  
8 performed, the person was a duly licensed bail agent  
9 under this part for the performance of the services.

10 (c) If the insurance commissioner denies, suspends,  
11 revokes, or refuses to renew any license, the aggrieved person  
12 shall be given an opportunity for a hearing subject to judicial  
13 review.

14 (d) The insurance commissioner, in lieu of or in addition  
15 to any other disciplinary action permitted in this section, may  
16 assess an administrative penalty upon the licensee. The  
17 administrative penalty shall be no less than \$300 and no more  
18 than \$1,000 for each instance of violation. Any monetary  
19 assessment shall be deposited into the general fund of the State.

20 **§804-F Prohibited activities; penalties.** (a) It is  
21 unlawful for any licensed bail agent to:



- 1 (1) Specify, suggest, or advise the employment of any  
2 particular attorney to represent the licensee's  
3 principal;
- 4 (2) Pay a fee or rebate or give or promise to give anything  
5 of value to a corrections officer, police officer, law  
6 enforcement officer, clerk, deputy clerk, any other  
7 employee of any court, prosecuting attorney or any of  
8 the prosecuting attorney's employees, or any person who  
9 has power to arrest or to hold any person in custody;
- 10 (3) Pay a fee or rebate or give anything of value to an  
11 attorney in bail bond matters, except in defense of any  
12 action on a bond or as counsel to represent the bail  
13 bond agent or the agent's representative or employees;
- 14 (4) Pay a fee or rebate or give or promise to give anything  
15 of value to the person on whose bond the licensee is  
16 surety;
- 17 (5) Except for the fee received for the bond, to fail to  
18 return any collateral or security within ten working  
19 days after receipt of a copy of the court order that  
20 results in a release of the bond by the court, unless  
21 the collateral also secures other obligations. A copy  
22 of the court order shall be provided to the bail agent



1 in Hawaii or the company, if any, on whose behalf the  
2 bail agent acts whether in Hawaii or out-of-state or  
3 both, by the person for whom the bond was written;  
4 (6) Accept anything of value from a person on whose bond  
5 the licensee is surety or from others on behalf of the  
6 person except the fee or premium on the bond, but the  
7 bail bond agent may accept collateral security or other  
8 indemnity if:  
9 (A) No collateral or security in tangible property is  
10 taken by pledge or debt instrument that allows  
11 retention, sale, or other disposition of the  
12 property upon default;  
13 (B) No collateral or security interest in real  
14 property is taken by mortgage or any other  
15 instrument unless the bail bond agent's interest  
16 in the property is limited to the amount of the  
17 bond;  
18 (C) The collateral or security taken by the bail bond  
19 agent is not pledged directly to any court as  
20 security for any appearance bond; and  
21 (D) The person from whom the collateral or security  
22 is taken is issued a receipt describing the



- 1                   condition of the collateral at the time it is  
2                   taken into the custody of the bail bond agent;
- 3       (7) Coerce, suggest, aid and abet, offer promise of favor,  
4           or threaten any person on whose bond the licensee is  
5           surety or offers to become surety to induce that person  
6           to commit any crime;
- 7       (8) Act as a bail bond agent in any court of record in this  
8           state while the name of the licensee is on the board,  
9           or under any circumstance where a licensee has failed  
10          to pay a bail forfeiture judgment after all applicable  
11          stays of execution have expired and the bond has not  
12          been otherwise exonerated or discharged;
- 13       (9) For any one licensee to have more than one bond posted  
14          at any one time and, in any single case, on behalf of  
15          any one person (no stacking powers);
- 16       (10) Fail to issue to the person from whom collateral or  
17           security is taken a receipt that includes a description  
18           of the collateral or security at the time it is taken  
19           into the custody of the bail bond agent; and
- 20       (11) Fail to post a bond within twenty-four hours of receipt  
21           of full payment or a signed contract for payment, or if  
22           the bond is not posted within twenty-four hours of



1 receipt of full payment or a signed contract for  
2 payment, failure to refund all moneys received, release  
3 all liens, and return all collateral within forty-eight  
4 hours of receipt of the payment or contract.

5 (b) Any licensee who violates any provision of this section  
6 is guilty of a misdemeanor and, upon conviction thereof, shall be  
7 punished by a fine of not more than \$1,000, or by imprisonment  
8 for not more than one year, or by both. Any criminal penalty  
9 prescribed in this section for a violation of this section shall  
10 be in addition to, and not exclusive of, any other applicable  
11 penalty prescribed by law.

12 (c) Any person who acts or attempts to act as a bail bond  
13 agent and who is not licensed as such under this part is guilty  
14 of a misdemeanor and, upon conviction thereof, shall be punished  
15 by a fine of not more than \$1,000, or by imprisonment for not  
16 more than one year, or by both.

17 **§804-G Fiduciary responsibilities.** (a) All premiums  
18 belonging to insurers and all unearned premiums belonging to  
19 insureds received by a bail agent licensed under this part shall  
20 be treated by the bail agent in a fiduciary capacity.

21 (b) All premiums received, less commissions if authorized,  
22 shall be remitted to the insurer on or before the contractual due



1 date or, if there is no contractual due date, within forty-five  
2 days after receipt.

3 (c) All returned premiums received from insurers or  
4 credited by insurers to the account of the bail agent shall be  
5 remitted to or credited to the account of the person entitled  
6 thereto within thirty days after the receipt or credit.

7 (d) It shall be the responsibility of any insurer having  
8 knowledge that a bail agent has failed to account for any  
9 collected premium to the insurer more than forty-five days after  
10 the contractual due date or, if there is no contractual due date,  
11 more than ninety days after receipt, to promptly report the  
12 failure to the insurance commissioner in writing.

13 (e) Every insurer shall remit unearned premiums to the  
14 insured or shall otherwise credit the account of the bail agent,  
15 as soon as is practicable after entitlement to the premiums has  
16 been established, but in no event more than forty-five days after  
17 the effective date of any cancellation or termination effected by  
18 the insurer or after the date of entitlement thereto as  
19 established by notification of cancellation or of termination or  
20 as otherwise established. It shall be the responsibility of any  
21 bail agent having knowledge of a failure on the part of any



1 insurer to comply with this subsection to promptly report the  
2 failure to the insurance commissioner in writing.

3 (f) No bail agent shall commingle premiums belonging to  
4 insurers and returned premiums belonging to insureds with the  
5 bail agent's personal funds or with any other funds except those  
6 directly connected with the bail agent's bail business.

7 (g) Any insurer that delivers, in this State, a policy of  
8 insurance to a bail agent representing the interest of the  
9 insured upon the application or request of such producer shall be  
10 deemed to have authorized such producer to receive on the  
11 insurer's behalf any premium due upon issuance or delivery of the  
12 policy; and the insurer shall be deemed to have so authorized the  
13 producer.

14 (h) All collateral shall be preserved and separately  
15 retained and the bail agent shall be responsible for the return  
16 of all such collateral taken and shall be liable with the surety  
17 company for such failure. When a bail bond agent accepts  
18 collateral as security, the bail bond agent shall give a written  
19 receipt for the collateral to the person on whose bond the bail  
20 bond agent is indemnitor or to another on behalf of such  
21 principal and the surety, which shall provide in detail a full  
22 description of the collateral received. In the event of the



1 failure of or inability for any reason of a bail bond agent or  
2 the agent's heirs or assignees to return collateral as required  
3 in this subsection, the commissioner or the commissioner's  
4 designee is authorized to take immediate possession of the  
5 collateral and take whatever actions are necessary and  
6 appropriate to ensure compliance with the obligations of this  
7 part relating to the return of collateral.

8 **§804-H Administration.** This part shall be administered and  
9 enforced by the insurance commissioner. The insurance  
10 commissioner may adopt rules pursuant to chapter 91 necessary to  
11 implement the provisions of this part."

12 SECTION 3. Chapter 804, Hawaii Revised Statutes, is amended  
13 by adding two new sections to be appropriately designated and to  
14 read as follows:

15 **§804-I Exoneration from bond liability.** (a) Any person  
16 executing a bail bond as principal or as surety shall be  
17 exonerated as follows:

- 18 (1) When the condition of the bond has been satisfied;  
19 (2) When the amount of the forfeiture has been paid;  
20 (3) When the surety appears and provides satisfactory  
21 evidence to the court that the defendant is unable to  
22 appear before the court due to the defendant's death or





1 the detention or incarceration of the defendant in a  
2 foreign jurisdiction if the defendant is incarcerated  
3 for a period in excess of ninety days and the State has  
4 refused to extradite the defendant; except that if the  
5 State extradites the defendant, all costs associated  
6 with the extradition shall be borne by the surety up to  
7 the amount of the bond. For the purposes of this  
8 paragraph, "costs associated with extradition" shall be  
9 calculated as and limited to the round-trip mileage  
10 between the Hawaii court of jurisdiction and the  
11 location of the defendant's incarceration at the rate  
12 allowed for reimbursement, up to the amount of the  
13 bond; or

- 14 (4) Upon surrender of the defendant into custody at any  
15 time before a judgment has been entered against the  
16 sureties for forfeiture of the bond, upon payment of  
17 all costs occasioned thereby. A surety may seize and  
18 surrender the defendant to the chief of police of the  
19 county wherein the bond is taken, and it is the duty of  
20 the chief of police, on such surrender and delivery of  
21 a certified copy of the bond by which the surety is



1 bound, to take the person into custody and, by writing,  
2 acknowledge the surrender.

3 (b) Upon entry of an order for deferred prosecution or  
4 deferred judgment, sureties upon any bond given for the  
5 appearance of the defendant shall be released from liability on  
6 the bond.

7 (c) A trial court has no jurisdiction to relieve the surety  
8 from liability on a bail bond except on grounds generally  
9 recognized by the law as excusing the performance of the  
10 undertaking, and such grounds exist only when:

11 (1) The appearance of accused is made impossible by an act  
12 of God;

13 (2) An act of the state that is the beneficiary of the  
14 bond; or

15 (3) An act of law.

16 **§804-J Enforcement procedures for compensated sureties.**

17 (a) Each court of record in this state shall implement a board  
18 system for the recording and dissemination of the names of those  
19 compensated sureties who are prohibited from posting bail bonds  
20 in the state due to an unpaid judgment as set forth in this  
21 section.



1        (b) By entering into a bond, each obligor, including the  
2 bond principal and compensated surety, submits to the  
3 jurisdiction of the court and acknowledges the applicability of  
4 the forfeiture procedures set forth in this section.

5        (c) Liability of bond obligors on bonds issued by  
6 compensated sureties may be enforced, without the necessity of an  
7 independent action, as follows:

8        (1) In the event a defendant does not appear before the  
9 court and is in violation of the primary condition of  
10 an appearance bond, the court may declare the bond  
11 forfeited;

12        (2) If a bond is declared forfeited by the court, notice of  
13 the bail forfeiture order shall be served on the bail  
14 agent by certified mail and on the bail insurance  
15 company by regular mail within ten days after the entry  
16 of the forfeiture. Service of notice of the bail  
17 forfeiture on the defendant is not required. The  
18 notice shall include, but need not be limited to:

19        (A) A statement intended to inform the compensated  
20 surety of the entry of forfeiture;

21        (B) An advisement that the compensated surety has the  
22 right to request a show cause hearing fifteen



1                   days after receipt of notice of forfeiture, by  
2                   procedures set by the court; and

3           (C)   An advisement that, if the compensated surety  
4                   does not request a show cause hearing, judgment  
5                   shall be entered upon expiration of thirty days  
6                   following the entry of forfeiture;

7           (3)   A compensated surety, upon whom notice of a bail  
8                   forfeiture order has been served, shall have fifteen  
9                   days after receipt of notice of the forfeiture to  
10                  request a hearing to show cause why judgment on the  
11                  forfeiture should not be entered for the State against  
12                  the compensated surety. The request shall be granted  
13                  by the court and a hearing shall be set within thirty  
14                  days after entry of forfeiture or at the court's  
15                  earliest convenience. At the conclusion of the hearing  
16                  if requested by the compensated surety, the court may  
17                  enter judgment for the State against the compensated  
18                  surety, or the court may in its discretion order  
19                  further hearings. Upon expiration of thirty days after  
20                  the entry of forfeiture, the court shall enter judgment  
21                  for the State against the compensated surety if the



1           compensated surety did not request a hearing to show  
2           cause;  
3        (4) If a show cause hearing was timely set, but the hearing  
4           did not occur within thirty days after the entry of  
5           forfeiture, any entry of judgment at the conclusion of  
6           the hearing against the compensated surety shall not be  
7           vacated on the grounds that the matter was not timely  
8           heard. If judgment is entered against a compensated  
9           surety upon the conclusion of a requested show cause  
10          hearing, and the hearing did not occur within thirty  
11          days after the entry of forfeiture, execution upon the  
12          judgment shall be automatically stayed for no more than  
13          one hundred twenty days after entry of forfeiture;  
14        (5) If at any time prior to the entry of judgment, the  
15          defendant appears in court, either voluntarily or in  
16          custody after surrender or arrest, the court, on its  
17          own motion, shall direct that the bail forfeiture be  
18          set aside and the bond exonerated at the time the  
19          defendant first appears in court; except that if the  
20          State extradites the defendant, all necessary and  
21          actual costs associated with the extradition shall be  
22          borne by the surety up to the amount of the bond;



1       (6) If, at a time prior to the entry of judgment, the  
2       surety provides proof to the court that the defendant  
3       is in custody in any other jurisdiction within the  
4       state, the court, on its own motion, shall direct that  
5       the bail forfeiture be set aside and the bond  
6       exonerated; except that if the court extradites the  
7       defendant, all necessary and actual costs associated  
8       with the extradition shall be borne by the surety up to  
9       the amount of the bond. If the court elects to  
10       extradite the defendant, any forfeiture will be stayed  
11       until such time the defendant appears in the court  
12       where the bond returns;

13       (7) A compensated surety shall be exonerated from liability  
14       upon the bond by satisfaction of the bail forfeiture  
15       judgment, surrender of the defendant, or order of the  
16       court. If the surety provides proof to the court that  
17       the defendant is in custody in any other jurisdiction  
18       within the state, within ninety days after the entry of  
19       judgment, the court, on its own motion, shall direct  
20       that the bail forfeiture judgment be vacated and the  
21       bond exonerated; except that if the court extradites  
22       the defendant, all necessary and actual costs



1 associated with the extradition shall be borne by the  
2 surety up to the amount of the bond. If the court  
3 elects to extradite the defendant, any judgment will be  
4 stayed until the time the defendant appears in the  
5 court where the bond returns;

6 (8) Execution upon the bail forfeiture judgment shall be  
7 automatically stayed for ninety days from the date of  
8 entry of judgment; except that if judgment is entered  
9 against a compensated surety upon the conclusion of a  
10 requested show cause hearing, and such hearing did not  
11 occur within thirty days after the entry of forfeiture,  
12 the judgment shall be automatically stayed;

13 (9) Upon the expiration of the stay of execution described  
14 in paragraph (8), the bail forfeiture judgment shall be  
15 paid forthwith by the compensated surety, if not  
16 previously paid, unless the defendant appears in court,  
17 either voluntarily or in custody after surrender or  
18 arrest, or the court enters an order granting an  
19 additional stay of execution or otherwise vacates the  
20 judgment;

21 (10) If a bail forfeiture judgment is not paid on or before  
22 the expiration date of the stay of execution, the name



1 of the bail bond agent shall be placed on the board of  
2 the court that entered the judgment. The bail bond  
3 agent shall be prohibited from executing any further  
4 bail bonds in this State until the judgment giving rise  
5 to placement on the board is satisfied, vacated, or  
6 otherwise discharged by order of the court;

7 (11) If a bail forfeiture judgment remains unpaid for thirty  
8 days after the name of the bail bond agent is placed on  
9 the board, the court shall send notice by certified  
10 mail to the bail insurance company for whom the bail  
11 bond agent has executed the bond that, if the judgment  
12 is not paid within fifteen days after the date of  
13 mailing of the notice, the name of the bail insurance  
14 company shall be placed on the board and the company  
15 shall be prohibited from executing any further bail  
16 bonds in this State until the judgment giving rise to  
17 placement on the board is satisfied, vacated, or  
18 otherwise discharged by order of the court;

19 (12) A compensated surety shall be removed forthwith from  
20 the board only after every judgment for which the  
21 compensated surety was placed on the board is  
22 satisfied, vacated, or discharged or stayed by entry of





1 an additional stay of execution. No compensated surety  
2 shall be placed on the board in the absence of the  
3 notice required by this section;

4 (13) The court may order that a bail forfeiture judgment be  
5 vacated and set aside or that execution thereon be  
6 stayed upon conditions as the court may impose, if it  
7 appears that justice so requires, as provided in  
8 section 804-DD(f) (g) (h) (i); provided that trial court  
9 has no jurisdiction to relieve the surety from  
10 liability on a bail bond except as provided in section  
11 804-DD(c);

12 (14) A compensated surety shall be exonerated from liability  
13 upon the bond by satisfaction of the bail forfeiture  
14 judgment, surrender of the defendant, or by order of  
15 the court. If the defendant appears in court, either  
16 voluntarily or in custody after surrender or arrest,  
17 within ninety days after the entry of judgment, the  
18 court, at the time the defendant first appears in  
19 court, on its own motion, shall direct that the bail  
20 forfeiture judgment be vacated and the bond exonerated;  
21 except that if the State extradites such defendant, all  
22 necessary and actual costs associated with such



1 extradition shall be borne by the surety up to the  
2 amount of the bond;

3 (15) If, within one year after payment of the bail  
4 forfeiture judgment, the compensated surety effects the  
5 apprehension or surrender of the defendant and provides  
6 reasonable notice to the court to which the bond  
7 returns that the defendant is available for  
8 extradition, the court shall vacate the judgment and  
9 order a remission of the amount paid on the bond, less  
10 any necessary and actual costs incurred by the State  
11 and the sheriff who has actually extradited the  
12 defendant;

13 (16) Bail bonds shall be deemed valid notwithstanding the  
14 fact that a bond may have been written by a compensated  
15 surety who has been placed on the board and is  
16 otherwise prohibited from writing bail bonds. The  
17 ineligibility of a compensated surety to write bonds  
18 because the name of the compensated surety has been  
19 placed on the board shall not be a defense to liability  
20 on any appearance bond accepted by a court;

21 (17) The automatic stay of execution upon a bail forfeiture  
22 judgment shall expire pursuant to its terms unless the



1 defendant appears and surrenders to the court having  
2 jurisdiction or satisfies the court that appearance and  
3 surrender by the defendant was impossible and without  
4 fault by the defendant. The court may order that a  
5 forfeiture be set aside and judgment vacated as set  
6 forth in this section; and

7 (18) If the name of a bail bond agent is placed on the  
8 board, and remains on the board for the same forfeiture  
9 for more than forty-five consecutive days, the court  
10 that placed the name of the bail bond agent on the  
11 board shall order the insurance commissioner to suspend  
12 the license of the bail bond agent until such time as  
13 all forfeitures and judgments ordered and entered  
14 against the bail bond agent have been certified as paid  
15 or vacated by order of a court of record. If the bail  
16 forfeiture judgment is not paid within fifteen days  
17 after the name of a bail insurance company has been  
18 placed on the board, the insurance commissioner shall  
19 also order the bail insurance company on the bond to  
20 pay the judgment after notice and hearing."

21 SECTION 4. In codifying the new sections added by sections  
22 2 and 3 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 5. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun, before its effective date.

6 SECTION 6. New statutory material is underscored.

7 SECTION 7. This Act shall take effect on January 1, 2112;  
8 provided that enforcement of section 2 of this Act shall not  
9 commence until the director of commerce and consumer affairs  
10 adopts rules as provided in section 804-H, Hawaii Revised  
11 Statutes, in section 2 of this Act, and files the rules with the  
12 office of the lieutenant governor as provided in chapter 91,  
13 Hawaii Revised Statutes.



**Report Title:**

Bail Bond Agents; Sureties; Licensing; Commerce and Consumer Affairs; Attorney General

**Description:**

Establishes a new part under Chapter 804, Hawaii Revised Statutes (HRS), to provide comprehensive oversight and regulation of bail bond agents. Establishes procedures for the exoneration of bail bond agents and sureties from bond liabilities and enforcement procedures for compensated sureties. (SB1961 HD1)

