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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. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding a new article to be appropriately designated  
3 and to read as follows:

4                           **"ARTICLE . BAIL AGENTS; SURETIES**

5           **§431: -A Definitions.** As used in this article:

6           "Bail agent" means a licensed insurance producer under  
7 article 9A who is appointed by an authorized surety insurer,  
8 furnishes bail for compensation in any court in this State, and  
9 has the power of attorney to execute or countersign bail bonds in  
10 connection with judicial proceedings. "Bail agent" shall not  
11 include a person who is a full-time salaried officer or employee  
12 of an insurer or a person who pledges United States currency, a  
13 United States postal money order, a cashier's check, or other  
14 property as security for a bail bond in connection with a  
15 judicial proceeding, whether for compensation or otherwise.



1 "On the board" means that the name of a bail agent has been  
2 publicly posted or disseminated by a court as being ineligible to  
3 write bail bonds.

4 **§431: -B License denial, nonrenewal, suspension, or**  
5 **revocation.** In addition to causes in section 431:9A-112, the  
6 commissioner may deny, place on probation, suspend, revoke, or  
7 refuse to issue or renew a bail agent's license and may levy a  
8 civil fine or penalty in accordance with articles 2 and 9A, or  
9 any combination of these actions, for any of the following  
10 causes:

11 (1) Failing to satisfy, pay, or otherwise discharge a bail  
12 forfeiture judgment after having the bail agent's name  
13 placed on the board for more than forty-five  
14 consecutive days for the same forfeiture;

15 (2) Failing to report, to preserve without use and retain  
16 separately, or to return collateral taken as security  
17 on any bond to the principal or depositor of the  
18 collateral;

19 (3) Failing to pay a final, nonappealable judgment award  
20 for failure to return or repay collateral received to  
21 secure a bond;



1 (4) Continuing to execute bail bonds in any court in this  
2 State while on the board, where the bail forfeiture  
3 judgment that resulted in being placed on the board  
4 has not been paid, stayed, vacated, exonerated, or  
5 otherwise discharged; or

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

13 **§431: -C Fiduciary responsibilities.** (a) In addition to  
14 the requirements of section 431:9A-123.5, bail agents shall have  
15 the responsibilities of a trustee for all premium, return  
16 premium funds, and collateral or security received or collected  
17 under this article.

18 (b) All premiums received, less commissions if authorized,  
19 shall be remitted to the insurer on or before the contractual  
20 due date or, if there is no contractual due date, within forty-  
21 five days after receipt.



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

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

11 (e) Every insurer shall remit unearned premium funds to  
12 the person entitled thereto or shall otherwise credit the  
13 account of the bail agent as soon as is practicable after  
14 entitlement to the premium funds has been established, but in no  
15 event more than forty-five days after the effective date of any  
16 cancellation or termination effected by the insurer or after the  
17 date of entitlement thereto, as established by notification of  
18 cancellation or of termination or as otherwise established. A  
19 bail agent having knowledge of a failure on the part of any  
20 insurer to comply with this subsection shall promptly report the  
21 failure to the commissioner in writing.



1 (f) No bail agent shall commingle premiums belonging to  
2 insurers and return premiums received or held by the bail agent  
3 or persons entitled to such funds with the bail agent's personal  
4 funds or with any other funds except those directly connected  
5 with the bail agent's bail business.

6 **§431: -D Bail agent not to act as attorney.** A bail agent  
7 who is also an attorney shall not represent a person to whom the  
8 attorney has furnished bail for compensation in any proceeding  
9 for which the attorney has furnished bail. The commissioner may  
10 place on probation, suspend, revoke, or refuse to renew a bail  
11 agent's license and may levy a civil fine or penalty in  
12 accordance with articles 2 and 9A, or any combination of these  
13 actions, for violation of this section."

14 SECTION 2. In codifying the new sections added by section  
15 1 of this Act, the revisor of statutes shall substitute  
16 appropriate section numbers for the letters used in designating  
17 the new sections in this Act.

18 SECTION 3. This Act shall take effect on July 1, 2008.



S.B. NO. 1961  
S.D. 1  
H.D. 1  
C.D. 1

**Report Title:**

Bail Agents; Regulation

**Description:**

Establishes grounds for the denial, nonrenewal, suspension, or revocation of a bail agent's insurance producer's license.  
Establishes fiduciary responsibilities for bail agents.  
Prohibits an attorney who is a bail agent from representing a person to whom the attorney has furnished bail for compensation.  
Defines terms "bail agent" and "on the board". (SB1961 CD1)

