
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 two million 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 or bonds to secure the release of a person
14 charged with a crime or offense.

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

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

20 **§804-B Bail agent license; qualifications.** (a) No person
21 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, jailer, or court clerk shall be licensed as a bail bond
7 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 employing the bail bond
15 agent notifies the insurance commissioner that the insurer has
16 cancelled the licensee's authority to act for or in behalf of the
17 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 (d) The insurance commissioner may adopt rules pursuant to
19 chapter 91 necessary to implement the provisions of this section.

20 **§804-E License denial, suspension, revocation, or**
21 **termination.** (a) The insurance commissioner may place on
22 probation, suspend, revoke, refuse to continue or renew, or



1 refuse to issue a bail agent license if, after notice and
2 hearing, the insurance commissioner finds any one or more of the
3 following:

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



- 1 (7) Conviction of a felony or misdemeanor involving moral
- 2 turpitude. For the purposes of this paragraph, "moral
- 3 turpitude" shall include any sexual offense against a
- 4 child;
- 5 (8) Commission of any unfair trade practice or fraud;
- 6 (9) The use of fraudulent, coercive, or dishonest practices
- 7 or demonstrating incompetence, untrustworthiness, or
- 8 financial irresponsibility in this State or elsewhere;
- 9 (10) Forgery of another's name on an application for
- 10 insurance or to any document related to an insurance
- 11 transaction;
- 12 (11) Cheating on an examination, including but not limited
- 13 to improperly using notes or any other reference
- 14 material to complete an examination for an insurance
- 15 license;
- 16 (12) Failure to fully meet the licensing requirements; or
- 17 (13) Knowingly accepting insurance business from a person
- 18 who is not licensed.
- 19 (b) The insurance commissioner shall deny, suspend, revoke,
- 20 or refuse to renew, the license of any person engaged in the
- 21 business of bail bond agent for any of the following reasons:



- 1 (1) Knowingly failing to comply with or knowingly violating
2 any provisions of this part or of any proper order or
3 rule of the insurance commissioner or any court of this
4 State where the licensee knew or reasonably should have
5 known of the provisions, order, or rule;
- 6 (2) Any activity prohibited in statute;
- 7 (3) Failure to satisfy, pay, or otherwise discharge a bail
8 forfeiture judgment after having the bail agent's name
9 placed on the board, for more than forty-five
10 consecutive days for the same forfeiture;
- 11 (4) Conviction of a felony, a guilty plea to a felony, or a
12 plea of nolo contendere to a felony within the last ten
13 years, regardless of whether the conviction or plea
14 resulted from conduct in or conduct related to the bail
15 bond business;
- 16 (5) Failure to report, to preserve without use and retain
17 separately, or to return collateral taken as security
18 on any bond to the principal or depositor of the
19 collateral;
- 20 (6) Failure to pay a final, nonappealable judgment award
21 for failure to return or repay collateral received to
22 secure a bond;



1 (7) Hiring, contracting with, or paying compensation to any
2 individual for bail recovery services in violation of
3 the provisions of part;

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

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

15 (c) If the insurance commissioner denies, suspends,
16 revokes, or refuses to renew any license, the aggrieved person
17 shall be given an opportunity for a hearing subject to judicial
18 review.

19 (d) The insurance commissioner, in lieu of or in addition
20 to any other disciplinary action permitted in this section, may
21 assess an administrative penalty upon the licensee. The
22 administrative penalty shall be no less than \$300 and no more



1 than \$1,000 for each instance of violation. Any monetary
2 assessment shall be deposited into the general fund of the State.

3 **§804-F Prohibited activities; penalties.** (a) It is
4 unlawful for any licensed bail agent to:

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



1 days after receipt of a copy of the court order that
2 results in a release of the bond by the court, unless
3 the collateral also secures other obligations. A copy
4 of the court order shall be provided to the bail agent
5 in Hawaii or the company, if any, for whom the bail
6 agent works whether in Hawaii or out-of-state, or both,
7 by the person for whom the bond was written;

8 (6) Accept anything of value from a person on whose bond
9 the licensee is surety or from others on behalf of the
10 person except the fee or premium on the bond, but the
11 bail bond agent may accept collateral security or other
12 indemnity if:

13 (A) No collateral or security in tangible property is
14 taken by pledge or debt instrument that allows
15 retention, sale, or other disposition of the
16 property upon default;

17 (B) No collateral or security interest in real property
18 is taken by mortgage or any other instrument
19 unless the bail bond agent's interest in the
20 property is limited to the amount of the bond;



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



1 of the collateral or security at the time it is taken
2 into the custody of the bail bond agent;

3 (11) Fail to post a bond within twenty-four hours of receipt
4 of full payment or a signed contract for payment, or if
5 the bond is not posted within twenty-four hours of
6 receipt of full payment or a signed contract for
7 payment, failure to refund all moneys received, release
8 all liens, and return all collateral within forty-eight
9 hours of receipt of the payment or contract.

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

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



1 **§804-G Fiduciary responsibilities.** (a) All premiums
2 belonging to insurers and all unearned premiums belonging to
3 insureds received by a bail agent licensed under this part shall
4 be treated by the bail agent in a fiduciary capacity. The
5 insurance commissioner may adopt rules pursuant to chapter 91
6 relating to the treatment of these premiums.

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

11 (c) All returned premiums received from insurers or
12 credited by insurers to the account of the bail agent shall be
13 remitted to or credited to the account of the person entitled
14 thereto within thirty days after the receipt or credit.

15 (d) If any bail agent has failed to account for any
16 collected premium to the insurer more than forty-five days after
17 the contractual due date or, if there is no contractual due date,
18 more than ninety days after receipt, the insurer shall promptly
19 report the failure to the insurance commissioner in writing.

20 (e) Every insurer shall remit unearned premiums to the
21 insured or shall otherwise credit the account of the bail agent,
22 as soon as is practicable after entitlement to the premiums has



1 been established, but in no event more than forty-five days after
2 the effective date of any cancellation or termination effected by
3 the insurer or after the date of entitlement thereto as
4 established by notification of cancellation or of termination or
5 as otherwise established. It shall be the responsibility of any
6 bail agent having knowledge of a failure on the part of any
7 insurer to comply with this subsection to promptly report the
8 failure to the insurance commissioner in writing.

9 (f) No bail agent shall commingle premiums belonging to
10 insurers and returned premiums belonging to insureds with the
11 bail agent's personal funds or with any other funds except those
12 directly connected with the bail agent's bail business.

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

20 (h) All collateral shall be preserved and separately
21 retained and the bail agent shall be responsible for the return
22 of all such collateral taken and shall be liable with the surety



1 company for such failure. When a bail bond agent accepts
2 collateral as security, the bail bond agent shall give a written
3 receipt for the collateral to the person on whose bond the bail
4 bond agent is indemnitor or to another on behalf of such
5 principal and the surety, which shall provide in detail a full
6 description of the collateral received. In the event of the
7 failure of or inability for any reason of a bail bond agent or
8 the agent's heirs or assignees to return collateral as required
9 in this subsection, the commissioner or the commissioner's
10 designee is authorized to take immediate possession of the
11 collateral and take whatever actions are necessary and
12 appropriate to ensure compliance with the obligations of this
13 part relating to the return of collateral.

14 **§804-H Administration.** This part shall be administered and
15 enforced by the insurance commissioner."

16 SECTION 3. Chapter 804, Hawaii Revised Statutes, is amended
17 by adding five new sections to be appropriately designated and to
18 read as follows:

19 **§804- Exoneration from bond liability.** (a) Any person
20 executing a bail bond as principal or as surety shall be
21 exonerated as follows:

22 (1) When the condition of the bond has been satisfied;



- 1 (2) When the amount of the forfeiture has been paid;
- 2 (3) When the surety appears and provides satisfactory
- 3 evidence to the court that the defendant is unable to
- 4 appear before the court due to the defendant's death or
- 5 the detention or incarceration of the defendant in a
- 6 foreign jurisdiction, if the defendant is incarcerated
- 7 for a period in excess of ninety days and the State has
- 8 refused to extradite the defendant; except that if the
- 9 State extradites the defendant, all costs associated
- 10 with the extradition shall be borne by the surety up to
- 11 the amount of the bond. For the purposes of this
- 12 paragraph, "costs associated with extradition" shall be
- 13 calculated as and limited to the round-trip mileage
- 14 between the Hawaii court of jurisdiction and the
- 15 location of the defendant's incarceration at the rate
- 16 allowed for reimbursement, up to the amount of the
- 17 bond; or
- 18 (4) Upon surrender of the defendant into custody at any
- 19 time before a judgment has been entered against the
- 20 sureties for forfeiture of the bond, upon payment of
- 21 all costs occasioned thereby. A surety may seize and
- 22 surrender the defendant to the sheriff of the county



1 wherein the bond is taken, and it is the duty of the
2 sheriff, on such surrender and delivery of a certified
3 copy of the bond by which the surety is bound, to take
4 the person into custody and, by writing, acknowledge
5 the surrender.

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

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

14 (1) The appearance of accused is made impossible by an act
15 of God;

16 (2) An act of the state that is the beneficiary of the
17 bond; or

18 (3) An act of law.

19 The case where the principal in a bail bond dies before the day
20 of performance or is prevented by illness from appearing falls
21 within paragraph (1). The case where the principal in a bail
22 bond is in prison within the State, pursuant to a judgment of a



1 court of competent jurisdiction of the State falls within
2 paragraph (2). The case where the party has been turned over to
3 the federal court within the State and is serving a sentence by
4 that court, or if the party has been arrested in the State and is
5 sent out of the State by the governor upon requisition from
6 another state or foreign jurisdiction, falls within paragraph
7 (3).

8 (d) Where the defendant in a criminal case is imprisoned in
9 another state at the time the case is called for trial and cannot
10 appear pursuant to the conditions of the defendant's bond, and
11 the surety thereon offers to defray the costs and expenses
12 involved in returning the defendant to Hawaii upon completion of
13 the imprisonment that prevented the defendant's attendance in the
14 trial court, the surety is relieved from a forfeiture.

15 (e) A defendant who is transferred from the State's custody
16 to a federal agency pursuant to a detainer has never been
17 released into the legal custody of the surety who is consequently
18 discharged from any liability on the bond.

19 (f) Broad discretion is vested in the court to consider
20 all the facts and circumstances of each case in their totality
21 to achieve a just result and satisfy the best interests of the
22 public.



1 (g) Forfeiture proceeding not to enrich public treasury.
2 The enriching of the public treasury is not part of the object at
3 which a forfeiture proceeding is aimed.

4 (h) Effect of material increase of risk to bondsman. When a
5 bondsman enters into a surety agreement, he undertakes a
6 calculated risk, so that events which materially increase that
7 risk have the effect of terminating the obligation.

8 (i) One of the functions of a bond is to relieve state of
9 burden of securing appearance in court by giving bondsman a
10 strong incentive to insure such attendance. Where person-posting
11 bond made money available to the court and did all that could be
12 expected in attempting to secure defendant's attendance in court,
13 purposes of bond were served and state will not be penalized by
14 bond's remittance.

15 **§804- Enforcement procedures for compensated sureties.**

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

21 (b) By entering into a bond, each obligor, including the
22 bond principal and compensated surety, submits to the



1 jurisdiction of the court and acknowledges the applicability of
2 the forfeiture procedures set forth in this section.

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

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

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

17 (A) A statement intended to inform the compensated
18 surety of the entry of forfeiture;

19 (B) An advisement that the compensated surety has the
20 right to request a show cause hearing fifteen days
21 after receipt of notice of forfeiture, by
22 procedures set by the court; and



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

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



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



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

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



1 elects to extradite the defendant, any judgment will be
2 stayed until the time the defendant appears in the
3 court where the bond returns.

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

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

19 (10) If a bail forfeiture judgment is not paid on or before
20 the expiration date of the stay of execution, the name
21 of the bail bond agent shall be placed on the board of
22 the court that entered the judgment. The bail bond



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

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

17 (12) A compensated surety shall be removed forthwith from
18 the board only after every judgment for which the
19 compensated surety was placed on the board is
20 satisfied, vacated, or discharged or stayed by entry of
21 an additional stay of execution. No compensated surety



1 shall be placed on the board in the absence of the
2 notice required by this section.

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

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

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. This Act shall take effect upon its approval;
7 provided that enforcement of section 2 of this Act shall not
8 commence until the director of commerce and consumer affairs
9 adopts rules as provided in section 1 of this Act and files the
10 rules with the office of the lieutenant governor as provided in
11 chapter 91, Hawaii Revised Statutes.



Report Title:

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

Description:

Creates a licensing requirement for bail bond agents. Requires the director of commerce and consumer affairs to adopt rules for the process and procedure of obtaining a bail bond agent license. Prohibits certain acts by bail bond agents. Provides for civil and criminal penalties for violations by bail bond agents. Requires the director of commerce and consumer affairs to adopt rules regulating compensated sureties. (SD1)

