
A BILL FOR AN ACT

RELATING TO BAIL.

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

1 SECTION 1. Chapter 804, Hawaii Revised Statutes, is
2 amended by adding a new part to read as follows:

3 "PART . COMPENSATED SURETIES

4 **§804- Prohibited compensated sureties; recording. (a)**

5 The judiciary shall create a board for recording and
6 disseminating the names of those compensated sureties who are
7 prohibited from posting bail bonds in the state due to any
8 unpaid judgment as set forth in this part.

9 (b) The ineligibility of a compensated surety to write
10 bonds because the name of the compensated surety has been placed
11 on the board pursuant to this section shall not be a defense to
12 liability on any appearance bond accepted by a court.

13 (c) If the name of a bail bonding agent is placed on the
14 board, and remains on the board for the same forfeiture for more
15 than forty-five consecutive days, the court that placed the name
16 of the bail bonding agent on the board shall disqualify the bail
17 bonding agent, after hearing pursuant to this part, until such
18 time as all forfeitures and judgments ordered and entered



1 against the bail bonding agent have been certified as paid or
2 vacated by order of a court of record. If the bail forfeiture
3 judgment is not paid within fifteen days after the name of a
4 bail insurance company has been placed on the board, the court
5 shall also order the bail insurance company on the bond to pay
6 the judgment after notice and hearing.

7 **§804- Jurisdiction.** By entering into a bond, each
8 obligor, including the bond principal and the compensated
9 surety, submits to the jurisdiction of the court and consents to
10 the forfeiture procedures set forth in this part.

11 **§804- Enforcement of bonds.** (a) Liability of bond
12 obligors on bonds issued by compensated sureties may be
13 enforced, without the necessity of an independent action, as
14 follows:

15 (1) In the event a defendant does not appear before the
16 court and is in violation of the primary condition of
17 an appearance bond, the court may declare the bond
18 forfeited; and

19 (2) If a bond is declared forfeited by the court, notice
20 of the bail forfeiture order shall be served on the
21 compensated surety by certified mail and on the bail
22 insurance company by regular mail within ten days



1 after the entry of the forfeiture. Service of notice
2 of the bail forfeiture on the defendant is not
3 required.

4 (b) The notice shall include, but not be limited to:

5 (1) A statement intended to inform the compensated surety
6 of the entry of forfeiture;

7 (2) An advisement that the compensated surety has the
8 right to request a show cause hearing fifteen days
9 after receipt of notice of forfeiture, by procedures
10 set by the court; and

11 (3) An advisement that if the compensated surety does not
12 request a show cause hearing, judgment shall be
13 entered upon expiration of thirty days following the
14 entry of forfeiture.

15 (c) A compensated surety, upon whom notice of a bail
16 forfeiture order has been served, shall have fifteen days after
17 receipt of notice of such forfeiture to request a hearing to
18 show cause why judgment on the forfeiture should not be entered
19 for the State against the compensated surety. Such request
20 shall be granted by the court and a hearing shall be set within
21 thirty days after entry of forfeiture or at the court's earliest
22 convenience. At the conclusion of the hearing requested by the



1 compensated surety, if any, the court may enter judgment for the
2 State against the compensated surety, or the court may in its
3 discretion order further hearings. Upon expiration of thirty
4 days after the entry of forfeiture, the court shall enter
5 judgment for the State against the compensated surety if the
6 compensated surety did not request within fifteen days after
7 receipt of notice of such forfeiture a hearing to show cause.

8 (d) If such a show cause hearing was timely set but the
9 hearing did not occur within thirty days after the entry of
10 forfeiture, no entry of judgment at the conclusion of the
11 hearing against the compensated surety shall be vacated on the
12 grounds that the matter was not timely heard. If judgment is
13 entered against a compensated surety upon the conclusion of a
14 requested show cause hearing, and such hearing did not occur
15 within thirty days after the entry of forfeiture, execution upon
16 the judgment shall be automatically stayed for no more than one
17 hundred twenty days after entry of forfeiture.

18 (e) If at any time prior to the entry of judgment, the
19 defendant appears in court, either voluntarily or in custody
20 after surrender or arrest, the court shall on its own motion
21 direct that the bail forfeiture be set aside and the bond
22 exonerated at the time the defendant first appears in court;



1 provided that if the State extradites such defendant, all
2 necessary and actual costs associated with such extradition
3 shall be borne by the compensated surety up to the amount of the
4 bond.

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

15 **§804- Exoneration.** A compensated surety shall be
16 exonerated from liability upon the bond by satisfaction of the
17 bail forfeiture judgment, surrender of the defendant, or order
18 of the court. If the surety provides proof to the court that
19 the defendant is in custody within the State, within ninety days
20 after the entry of judgment, the court shall on its own motion
21 direct that the bail forfeiture judgment be vacated and the bond
22 exonerated; provided that if the court extradites the defendant,



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

6 **§804- Execution of bail.** (a) Execution upon a bail
7 forfeiture judgment shall be automatically stayed for ninety
8 days from the date of entry of judgment; provided that if
9 judgment is entered against a compensated surety upon the
10 conclusion of a requested show cause hearing, and such hearing
11 did not occur within thirty days after the entry of forfeiture,
12 the judgment shall be automatically stayed as set forth in
13 accordance with this section.

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

21 (c) If a bail forfeiture judgment is not paid on or before
22 the expiration date of the stay of execution described in this



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

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

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



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

3 (f) The automatic stay of execution upon a bail forfeiture
4 judgment as described in this part shall expire pursuant to its
5 terms unless the defendant appears and surrenders to the court
6 having jurisdiction or satisfies the court that appearance and
7 surrender by the defendant was impossible and without fault by
8 such defendant. The court may order that a forfeiture be set
9 aside and judgment vacated as set forth in this part.

10 **§804- Judgment set aside or vacated; when.** (a) The
11 court may order that a bail forfeiture judgment be vacated and
12 set aside or that execution thereon be stayed upon such
13 conditions as the court may impose, if it appears that justice
14 so requires.

15 (b) Acts of God, the State, or of law relieve a surety
16 from liability. A trial court has no jurisdiction to relieve
17 the surety from liability on a bail bond except on grounds
18 generally recognized by the law as excusing the performance of
19 the undertaking, and such grounds exist only when the appearance
20 of accused is made impossible by an act of God, an act of the
21 State which is the beneficiary of the bond, or an act of law.

22 (c) It shall be deemed an act of God where the principal



1 in a bail bond dies before the day of performance or is
2 prevented by illness from appearing. It shall be deemed an act
3 of state where the principal in a bail bond is in prison within
4 the State, pursuant to a judgment of a court of competent
5 jurisdiction of the State. It shall be deemed an act of law
6 where the party has been turned over to the federal court within
7 the State by a prior bondsman and is serving a sentence by that
8 court, or if the party has been arrested in the State where the
9 obligation is given and sent out of the State by the governor
10 upon requisition from another state or foreign jurisdiction.

11 **§804- Risk to compensated surety; effect.** When a
12 compensated surety enters into a surety agreement, the
13 compensated surety undertakes a calculated risk, so that events
14 which materially increase that risk have the effect of
15 terminating the surety obligation.

16 **§804- Exoneration; additional circumstances.** A
17 compensated surety shall be exonerated from liability upon a
18 bond by satisfaction of the bail forfeiture judgment, surrender
19 of the defendant, or by order of the court. The defendant shall
20 appear at each place, and upon each date, to which the
21 proceeding is transferred or continued, until a plea of guilty,



1 nolo contender, or conviction is entered in response the
2 charges.

3 **§804- Appearance after judgment.** (a) If the defendant
4 appears in court, either voluntarily or in custody after
5 surrender or arrest, within ninety days after the entry of
6 judgment, the court, at the time the defendant first appears in
7 court, shall on its own motion direct that the bail forfeiture
8 judgment be vacated and the bond exonerated; provided that if
9 the state extradites such defendant, all necessary and actual
10 costs associated with such extradition shall be borne by the
11 surety up to the amount of the bond.

12 **§804- Exoneration of bail bond.** (a) Any person
13 executing a bail bond as principal or as surety shall be
14 exonerated as follows:

- 15 (1) When the condition of the bond has been satisfied; or
- 16 (2) If, within one year after payment of the bail
17 forfeiture judgment, the compensated surety effects
18 the apprehension or surrender of the defendant and
19 provides reasonable notice to the court to which the
20 bond returns that the defendant is available for
21 extradition, the court shall vacate the judgment and
22 order a remission of the amount paid on the bond less



1 any necessary and actual costs incurred by the State
 2 and the sheriff who has actually extradited the
 3 defendant.

4 **§804- Bond valid.** Bail bonds shall be deemed valid
 5 notwithstanding the fact that a bond may have been written by a
 6 compensated surety who has been placed on the board pursuant to
 7 this part and is otherwise prohibited from writing bail bonds."

8 SECTION 2. This Act does not affect rights and duties that
 9 matured, penalties that were incurred, and proceedings that were
 10 begun before its effective date.

11 SECTION 3. This Act shall take effect upon its approval.

12

INTRODUCED BY:

JAN 25 2012



H.B. NO. 2868

Report Title:

Bail Bonds; Compensated Surety; Enforcement

Description:

Establishes a board to list and disseminate the names of compensated sureties who are prohibited from posting bail bonds. Creates a process for the court to handle compensated sureties with forfeited bonds when the terms of bail have been violated, including the process under which the court may collect from compensated sureties for the forfeited bonds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

