
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 be appropriately designated and
3 to read as follows:

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

5 **§804- Definitions.** As used in this part, unless the
6 context otherwise requires:

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

17 "Bail fugitive" means a defendant in a pending criminal
18 case who has been released from custody under a financially



1 secured appearance, cash, or other bond and has had that bond
2 declared forfeited, or a defendant in a pending criminal case
3 who has 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
8 the 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
11 the 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."



1 SECTION 2. Chapter 804, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§804- Exoneration from bond liability. (a) Any person
5 executing a bail bond as principal or as surety shall be
6 exonerated as follows:

- 7 (1) When the condition of the bond has been satisfied;
8 (2) When the amount of the forfeiture has been paid;
9 (3) When the surety appears and provides satisfactory
10 evidence to the court that the defendant is unable to
11 appear before the court due to the defendant's death
12 or the detention or incarceration of the defendant in
13 a foreign jurisdiction if the defendant is
14 incarcerated for a period in excess of ninety days and
15 the State has refused to extradite the defendant;
16 except that if the State extradites the defendant, all
17 costs associated with the extradition shall be borne
18 by the surety up to the amount of the bond. For the
19 purposes of this paragraph, "costs associated with
20 extradition" shall be calculated as and limited to the
21 round-trip mileage between the Hawaii court of
22 jurisdiction and the location of the defendant's



1 incarceration at the rate allowed for reimbursement,
2 up to the amount of the bond; or
3 (4) Upon surrender of the defendant into custody at any
4 time before a judgment has been entered against the
5 sureties for forfeiture of the bond, upon payment of
6 all costs occasioned thereby. A surety may seize and
7 surrender the defendant to the chief of police of the
8 county wherein the bond is taken, and it is the duty
9 of the chief of police, on such surrender and delivery
10 of a certified copy of the bond by which the surety is
11 bound, to take the person into custody and, by
12 writing, acknowledge the surrender.

13 (b) Upon entry of an order for deferred prosecution or
14 deferred judgment, sureties upon any bond given for the
15 appearance of the defendant shall be released from liability on
16 the bond.

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

21 (1) The appearance of accused is made impossible by an act
22 of God;



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

3 (3) An act of law.

4 **§804- Enforcement procedures for compensated sureties.**

5 (a) Each court of record in this State shall implement a board
6 system for the recording and dissemination of the names of those
7 compensated sureties who are prohibited from posting bail bonds
8 in the state due to an unpaid judgment as set forth in this
9 section.

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

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

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

21 (2) If a bond is declared forfeited by the court, notice
22 of the bail forfeiture order shall be served on the



1 bail agent by certified mail and on the bail insurance
2 company by regular mail within ten days after the
3 entry of the forfeiture. Service of notice of the
4 bail forfeiture on the defendant is not required. The
5 notice shall include, but need not be limited to:

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

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

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

16 (3) A compensated surety, upon whom notice of a bail
17 forfeiture order has been served, shall have fifteen
18 days after receipt of notice of the forfeiture to
19 request a hearing to show cause why judgment on the
20 forfeiture should not be entered for the State against
21 the compensated surety. The request shall be granted
22 by the court and a hearing shall be set within thirty



1 days after entry of forfeiture or at the court's
2 earliest convenience. At the conclusion of the
3 hearing if requested by the compensated surety, the
4 court may enter judgment for the State against the
5 compensated surety, or the court may in its discretion
6 order further hearings. Upon expiration of thirty
7 days after the entry of forfeiture, the court shall
8 enter judgment for the State against the compensated
9 surety if the compensated surety did not request a
10 hearing to show cause;

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



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



1 (7) A compensated surety shall be exonerated from
2 liability upon the bond by satisfaction of the bail
3 forfeiture judgment, surrender of the defendant, or
4 order of the court. If the surety provides proof to
5 the court that the defendant is in custody in any
6 other jurisdiction within the state, within ninety
7 days after the entry of judgment, the court, on its
8 own motion, shall direct that the bail forfeiture
9 judgment be vacated and the bond exonerated; except
10 that if the court extradites the defendant, all
11 necessary and actual costs associated with the
12 extradition shall be borne by the surety up to the
13 amount of the bond. If the court elects to extradite
14 the defendant, any judgment will be stayed until the
15 time the defendant appears in the court where the bond
16 returns;

17 (8) Execution upon the bail forfeiture judgment shall be
18 automatically stayed for ninety days from the date of
19 entry of judgment; except that if judgment is entered
20 against a compensated surety upon the conclusion of a
21 requested show cause hearing, and such hearing did not
22 occur within thirty days after the entry of



1 forfeiture, the judgment shall be automatically
2 stayed;

3 (9) Upon the expiration of the stay of execution described
4 in paragraph (8), the bail forfeiture judgment shall
5 be paid forthwith by the compensated surety, if not
6 previously paid, unless the defendant appears in
7 court, either voluntarily or in custody after
8 surrender or arrest, or the court enters an order
9 granting an additional stay of execution or otherwise
10 vacates the judgment;

11 (10) If a bail forfeiture judgment is not paid on or before
12 the expiration date of the stay of execution, the name
13 of the bail bond agent shall be placed on the board of
14 the court that entered the judgment. The bail bond
15 agent shall be prohibited from executing any further
16 bail bonds in this State until the judgment giving
17 rise to placement on the board is satisfied, vacated,
18 or otherwise discharged by order of the court;

19 (11) If a bail forfeiture judgment remains unpaid for
20 thirty days after the name of the bail bond agent is
21 placed on the board, the court shall send notice by
22 certified mail to the bail insurance company for whom



1 the bail bond agent has executed the bond that, if the
2 judgment is not paid within fifteen days after the
3 date of mailing of the notice, the name of the bail
4 insurance company shall be placed on the board and the
5 company shall be prohibited from executing any further
6 bail bonds in this State until the judgment giving
7 rise to placement on the board is satisfied, vacated,
8 or otherwise discharged by order of the court;

9 (12) A compensated surety shall be removed forthwith from
10 the board only after every judgment for which the
11 compensated surety was placed on the board is
12 satisfied, vacated, or discharged or stayed by entry
13 of an additional stay of execution. No compensated
14 surety shall be placed on the board in the absence of
15 the notice required by this section;

16 (13) The court may order that a bail forfeiture judgment be
17 vacated and set aside or that execution thereon be
18 stayed upon conditions as the court may impose, if it
19 appears that justice so requires, as provided in
20 chapter 804; provided that trial court has no
21 jurisdiction to relieve the surety from liability on a
22 bail bond except as provided in chapter 804;



- 1 (14) A compensated surety shall be exonerated from
2 liability upon the bond by satisfaction of the bail
3 forfeiture judgment, surrender of the defendant, or by
4 order of the court. If the defendant appears in
5 court, either voluntarily or in custody after
6 surrender or arrest, within ninety days after the
7 entry of judgment, the court, at the time the
8 defendant first appears in court, on its own motion,
9 shall direct that the bail forfeiture judgment be
10 vacated and the bond exonerated; except that if the
11 State extradites such defendant, all necessary and
12 actual costs associated with such extradition shall be
13 borne by the surety up to the amount of the bond;
- 14 (15) If, within one year after payment of the bail
15 forfeiture judgment, the compensated surety effects
16 the apprehension or surrender of the defendant and
17 provides reasonable notice to the court to which the
18 bond returns that the defendant is available for
19 extradition, the court shall vacate the judgment and
20 order a remission of the amount paid on the bond, less
21 any necessary and actual costs incurred by the State



1 and the sheriff who has actually extradited the
2 defendant;

3 (16) Bail bonds shall be deemed valid notwithstanding the
4 fact that a bond may have been written by a
5 compensated surety who has been placed on the board
6 and is otherwise prohibited from writing bail bonds.

7 The ineligibility of a compensated surety to write
8 bonds because the name of the compensated surety has
9 been placed on the board shall not be a defense to
10 liability on any appearance bond accepted by a court;

11 (17) The automatic stay of execution upon a bail forfeiture
12 judgment shall expire pursuant to its terms unless the
13 defendant appears and surrenders to the court having
14 jurisdiction or satisfies the court that appearance
15 and surrender by the defendant was impossible and
16 without fault by the defendant. The court may order
17 that a forfeiture be set aside and judgment vacated as
18 set forth in this section; and

19 (18) If the name of a bail bond agent is placed on the
20 board, and remains on the board for the same
21 forfeiture for more than forty-five consecutive days,
22 the court that placed the name of the bail bond agent



1 on the board shall order the insurance commissioner to
2 suspend the license of the bail bond agent until such
3 time as all forfeitures and judgments ordered and
4 entered against the bail bond agent have been
5 certified as paid or vacated by order of a court of
6 record. If the bail forfeiture judgment is not paid
7 within fifteen days after the name of a bail insurance
8 company has been placed on the board, the insurance
9 commissioner shall also order the bail insurance
10 company on the bond to pay the judgment after notice
11 and hearing."

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon on January 7,
17 2059.



Report Title:

Bail Bonds; Compensated Surety; Enforcement

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. Effective January 7, 2059. (HB2868 HD1)

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

