

JAN 25 2012

S.B. NO. 3068

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# A BILL FOR AN ACT

RELATING TO BAIL BONDS.

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

1           SECTION 1. 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-       Bail bondsmen defined. A bail bondsmen is a  
5 person or entity that gives bail, as defined in section 804-1  
6 and as qualified under section 804-10.5.

7           §804-       Enforcement procedures for bail bondsmen. (a)  
8 Each court of record in this State shall implement a system for  
9 the recording and dissemination of the names of bail bondsmen  
10 who are prohibited from posting bail bonds in the State due to  
11 an unpaid judgment as set forth in this section.

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

16           (c) Liability of bond obligors on bonds issued by bail  
17 bondsmen may be enforced, without the necessity of an  
18 independent action, as follows:



1        (1) If a defendant does not appear before the court and is  
2        in violation of the primary condition of an appearance  
3        bond, the court may declare the bond forfeited. If a  
4        bond is declared forfeited by the court, notice of the  
5        bail forfeiture order shall be served on the bonding  
6        agent by certified mail and on the bail insurance  
7        company by regular mail within ten days after the  
8        entry of said forfeiture. Service of notice of the  
9        bail forfeiture on the defendant is not required. The  
10       notice shall include but is not limited to:

11       (A) A statement intended to inform the bail bondsmen  
12       of the entry of forfeiture;

13       (B) An advisement that the bail bondsmen has the  
14       right to request a show cause hearing fifteen  
15       days after receipt of notice of forfeiture, by  
16       procedures set by the court; and

17       (C) An advisement that if the bail bondsmen does not  
18       request a show cause hearing, judgment shall be  
19       entered upon expiration of thirty days following  
20       the entry of forfeiture.

21       (d) A bail bondsmen, upon whom notice of a bail forfeiture  
22       order has been served, shall have fifteen days after receipt of



1 notice of forfeiture to request a hearing to show cause why  
2 judgment on the forfeiture should not be entered for the state  
3 against the bail bondsmen. The request shall be granted by the  
4 court and a hearing shall be set within thirty days after entry  
5 of forfeiture or at the court's earliest convenience. At the  
6 conclusion of the hearing requested by the bail bondsmen, if  
7 any, the court may enter judgment for the State against the bail  
8 bondsmen, or the court may in its discretion order further  
9 hearings. Upon expiration of thirty days after the entry of  
10 forfeiture, the court shall enter judgment for the State against  
11 the bail bondsmen if the bail bondsmen did not request within  
12 fifteen days after receipt of notice of such forfeiture a  
13 hearing to show cause.

14 (e) If a show cause hearing was timely set but the hearing  
15 did not occur within thirty days after the entry of forfeiture,  
16 any entry of judgment at the conclusion of the hearing against  
17 the bail bondsmen shall not be vacated on the grounds that the  
18 matter was not timely heard. If judgment is entered against a  
19 bail bondsmen upon the conclusion of a requested show cause  
20 hearing, and the hearing did not occur within thirty days after  
21 the entry of forfeiture, execution upon the judgment shall be



1 automatically stayed for no more than one hundred twenty days  
2 after entry of forfeiture.

3 (f) If at any time prior to the entry of judgment, the  
4 defendant appears in court, either voluntarily or in custody  
5 after surrender or arrest, the court shall on its own motion  
6 direct that the bail forfeiture be set aside and the bond  
7 exonerated at the time the defendant first appears in court;  
8 except that, if the State extradites such defendant, all  
9 necessary and actual costs associated with the extradition shall  
10 be borne by the surety up to the amount of the bond.

11 (g) If, at a time prior to the entry of judgment, the bail  
12 bondsmen provides proof to the court that the defendant is in  
13 custody in any other jurisdiction within the State, the court  
14 shall on its own motion direct that the bail forfeiture be set  
15 aside and the bond exonerated; except that, if the court  
16 extradites the defendant, all necessary and actual costs  
17 associated with the extradition shall be borne by the surety up  
18 to the amount of the bond. If the court elects to extradite the  
19 defendant, any forfeiture will be stayed until such time the  
20 defendant appears in the court where the bond returns.

21 (h) A bail bondsmen shall be exonerated from liability  
22 upon the bond by satisfaction of the bail forfeiture judgment,



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

12 (i) Execution upon a bail forfeiture judgment shall be  
13 automatically stayed for ninety days from the date of entry of  
14 judgment; except that, if judgment is entered against a bail  
15 bondsmen upon the conclusion of a requested show cause hearing,  
16 and the hearing did not occur within thirty days after the entry  
17 of forfeiture, the judgment shall be automatically stayed as set  
18 forth in this subsection.

19 (j) Upon the expiration of the stay of execution, the bail  
20 forfeiture judgment shall be paid forthwith by the bail  
21 bondsmen, if not previously paid, unless the defendant appears  
22 in court, either voluntarily or in custody after surrender or



1 arrest, or the court enters an order granting an additional stay  
2 of execution or otherwise vacates the judgment.

3 (k) If a bail forfeiture judgment is not paid on or before  
4 the expiration date of the stay of execution, the name of the  
5 bail bondsmen shall be placed on the record of the court that  
6 entered the judgment. The bail bondsmen shall be prohibited  
7 from executing any further bail bonds in this State until the  
8 judgment giving rise to placement on the board is satisfied,  
9 vacated, or otherwise discharged by order of the court.

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

20 A bail bondsmen shall be removed forthwith from the record only  
21 after every judgment for which the bail bondsmen was placed on  
22 the record is satisfied, vacated, discharged, or stayed by entry



1 of an additional stay of execution. No bail bondsmen shall be  
2 placed on the board in the absence of the required notice.

3 (1) The court may order that a bail forfeiture judgment be  
4 vacated and set aside or that execution thereon be stayed upon  
5 such conditions as the court may impose, if it appears that  
6 justice so requires.

7 (m) In exercising its discretion in any decision or order  
8 under this section, a trial court shall be mindful of the  
9 policies concerning bail, including the policy that sureties  
10 should not be penalized when it appears they are unable, through  
11 no fault of their own, to perform the condition of the bond.  
12 Acts of God, of the State, or operation of law relieve a surety  
13 from liability. A trial court has no jurisdiction to relieve  
14 the surety from liability on a bail bond except on grounds  
15 generally recognized by the law as excusing the performance of  
16 the undertaking, and grounds exist only when the appearance of  
17 accused is made impossible by an act of God, an act of the State  
18 which is the beneficiary of the bond, or an act of law. If the  
19 principal in a bail bond dies before the day of performance or  
20 is prevented by illness from appearing, the case shall be  
21 considered as an act of God. If the principal in a bail bond is  
22 in prison within the State, pursuant to a judgment of a court of



1 competent jurisdiction of the State, the case shall be  
2 considered as an act of the State. Where the party has been  
3 turned over to the federal court within the State by a prior  
4 bondsmen and is serving a sentence by that court, or if the  
5 party has been arrested in the state where the obligation is  
6 given and sent out of the State by the governor upon requisition  
7 from another state or foreign jurisdiction, the case shall be  
8 considered as an operation of law.

9 (n) When a bail bondsmen enters into a surety agreement,  
10 he undertakes a calculated risk, so that events which materially  
11 increase that risk have the effect of terminating the  
12 obligation.

13 (o) A bail bondsmen shall be exonerated from liability  
14 upon the bond by satisfaction of the bail forfeiture judgment,  
15 surrender of the defendant, or by order of the court. The  
16 defendant shall appear at each place, and upon each date to  
17 answer the charges, or at a court to which the proceeding is  
18 transferred or continued, until an appropriate plea or  
19 conviction. If the defendant appears in court, either  
20 voluntarily or in custody after surrender or arrest, within  
21 ninety days after the entry of judgment, the court, at the time  
22 the defendant first appears in court, shall on its own motion





1 direct that the bail forfeiture judgment be vacated and the bond  
2 exonerated; except that, if the State extradites such defendant,  
3 all necessary and actual costs associated with such extradition  
4 shall be borne by the surety up to the amount of the bond.

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

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

20 (r) The automatic stay of execution upon a bail forfeiture  
21 judgment shall expire pursuant to its terms unless the defendant  
22 appears and surrenders to the court having jurisdiction or



1 satisfies the court that appearance and surrender by the  
2 defendant was impossible and without fault by the defendant, in  
3 which case the court may order that a forfeiture be set aside  
4 and judgment vacated.

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

18 SECTION 2. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun before its effective date.

21 SECTION 3. New statutory material is underscored.

22



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *[Handwritten Signature]*



# S.B. NO. 3068

**Report Title:**

Bail Bondsmen

**Description:**

Enacts provisions regulating the procedures and rights of bail bondsmen in bail forfeiture cases.

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

