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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-       Exoneration from bail bond liability. (a) Any  
5 person 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 or bail agent appears and provides  
10           satisfactory evidence to the court that the defendant  
11           is unable to appear before the court due to the  
12           defendant's death or detention or incarceration in a  
13           foreign jurisdiction, if the defendant is incarcerated  
14           for a period in excess of ninety days and the State is  
15           unable or has refused to extradite the defendant;  
16           provided that if the State extradites the defendant,  
17           all costs associated with the extradition shall be



1 borne by the surety or bail agent up to the amount of  
2 the bond.

3 For the purposes of this paragraph, "costs associated  
4 with extradition" shall be calculated as and limited  
5 to the round-trip mileage between the Hawaii court of  
6 jurisdiction and the location of the defendant's  
7 incarceration at the rate allowed for reimbursement,  
8 up to the amount of the bond;

9 (4) When bail is revoked pursuant to section 804-7.3 or  
10 otherwise and the defendant is before the court or  
11 otherwise in custody; or

12 (5) Upon surrender of the defendant into custody pursuant  
13 to section 804-14 or 804-41 at any time before a  
14 judgment has been entered against the sureties for  
15 forfeiture of the bond, or until one year after the  
16 payment of the judgment, upon payment of all costs  
17 occasioned thereby. A surety or bail agent may seize  
18 and surrender the defendant to the chief of police of  
19 the county wherein the bond is taken, and it is the  
20 duty of the chief of police, on such surrender and  
21 delivery of a certified copy of the bond by which the



1 surety or bail agent is bound, to take the person into  
2 custody and acknowledge the surrender in writing.

3 (b) Upon entry of an order for deferred prosecution or  
4 deferred judgment, sureties or bail agents upon any bond given  
5 for the appearance of the defendant shall be released from  
6 liability on the bond.

7 (c) A trial court has no jurisdiction to relieve the  
8 surety or bail agent from liability on a bail bond, except on  
9 grounds generally recognized by the law as excusing the  
10 performance of a contract, and such grounds exist only when the  
11 appearance of the accused is made impossible by:

12 (1) An act of God;

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

15 (3) An act of law.

16 **§804- Enforcement procedures for bail agents.** (a) Each  
17 court of record in this State shall implement a board system for  
18 the recording and dissemination of the names of those bail  
19 agents who are prohibited from posting bail bonds in the State  
20 due to an unpaid judgment as set forth in this section.

21 (b) By entering into a bond, each obligor, including the  
22 bond principal and bail agents, submits to the jurisdiction of



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

3 (c) Liability of bond obligors on bonds issued by bail  
4 agents may be enforced, without the necessity of an independent  
5 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  
11 of a 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  
14 entry of the forfeiture. Service of notice of the  
15 bail forfeiture on the defendant is not required. The  
16 notice shall include:

17 (A) A statement intended to inform the bail agent of  
18 the entry of forfeiture;

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



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

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

21           (4) If a show cause hearing was timely set, but the  
22                           hearing did not occur within thirty days after the



1 entry of forfeiture, any entry of judgment at the  
2 conclusion of the hearing against the bail agent shall  
3 not be vacated on the grounds that the matter was not  
4 timely heard. If judgment is entered against a bail  
5 agent upon the conclusion of a requested show cause  
6 hearing, and the hearing did not occur within thirty  
7 days after the entry of forfeiture, execution upon the  
8 judgment shall be automatically stayed for no more  
9 than one hundred twenty days after entry of  
10 forfeiture;

11 (5) If at any time prior to the entry of judgment, the  
12 defendant appears in court, either voluntarily or in  
13 custody after surrender or arrest, the court, on its  
14 own motion, shall direct that the bail forfeiture be  
15 set aside and the bond exonerated at the time the  
16 defendant first appears in court; provided that if the  
17 State extradites the defendant, all necessary and  
18 actual costs associated with the extradition shall be  
19 borne by the surety or bail agent up to the amount of  
20 the bond;

21 (6) If, at a time prior to the entry of judgment, the  
22 surety or bail agent provides proof to the court that



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

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



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

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

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

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



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

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

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



1           execution. No bail agent shall be placed on the board  
2           in the absence of the 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           chapter 804; provided that trial court has no  
8           jurisdiction to relieve the surety or bail agent from  
9           liability on a bail bond except as provided in chapter  
10          804;  
11       (14) A bail agent shall be exonerated from liability upon  
12           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  
20           exonerated; provided that if the State extradites such  
21           defendant, all necessary and actual costs associated



1           with such extradition shall be borne by the surety up  
2           to the amount of the bond;

3           (15) A bail agent or bail insurance company may surrender  
4           a defendant within one year of paying a judgment;

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

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



- 1        (18) The automatic stay of execution upon a bail forfeiture  
2        judgment shall expire pursuant to its terms, unless  
3        the defendant appears and surrenders to the court  
4        having jurisdiction or the surety or bail agent  
5        satisfies the court that appearance and surrender by  
6        the defendant was impossible and without fault by the  
7        defendant. The court may order that a forfeiture be  
8        set aside and judgment vacated as set forth in this  
9        section; and
- 10       (19) If the name of a bail agent is placed on the board,  
11       and remains on the board for the same forfeiture for  
12       more than forty-five consecutive days, the court that  
13       placed the name of the bail agent on the board shall  
14       order the insurance commissioner to suspend the  
15       license of the bail agent until such time as all  
16       forfeitures and judgments ordered and entered against  
17       the bail agent have been certified as paid or vacated  
18       by order of a court of record. If the bail forfeiture  
19       judgment is not paid within fifteen days after the  
20       name of a bail insurance company has been placed on  
21       the board, the insurance commissioner shall also order



1           the bail insurance company on the bond to pay the  
2           judgment after notice and hearing."

3           SECTION 2. Chapter 804-1, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "~~§804-1 [Bail defined.]~~ Definitions. [~~Bail, or the giving~~  
6 ~~of bail, is]~~ As used in this part, unless the context otherwise  
7 requires:

8           "Bail" or the "giving of bail" means the signing of the  
9 recognizance or bail bond by the defendant and the defendant's  
10 surety or sureties, conditioned [~~for~~] on the appearance of the  
11 defendant at the session of a court of competent jurisdiction,  
12 to be named in the condition, and [~~to abide~~] on the defendant  
13 abiding by the judgment of the court[~~er~~], a financially secured  
14 appearance, cash, or other bond

15           "Bail agent" or "bail bond agent" means any person who  
16 gives bail or bail bonds for compensation in a court of  
17 competent jurisdiction in this State, is subject to the director  
18 of commerce and consumer affairs, and who is appointed by an  
19 insurer by power of attorney to execute or countersign bail  
20 bonds in connection with judicial proceedings, including a  
21 compensated surety. "Bail agent" or "bail bond agent" shall not  
22 include a person who is a full-time, salaried officer or



1 employee of an insurer or a person who pledges United States  
2 currency, a United States postal money order, a cashier's check,  
3 or other property as security for a bail bond in connection with  
4 a judicial proceeding, whether for compensation or otherwise.

5 "Bail fugitive" means a defendant in a pending criminal  
6 case who has been released from custody under a financially  
7 secured bail, cash, or other bond and has had that bond declared  
8 forfeited, or a defendant in a pending criminal case who has  
9 violated a bond condition whereby apprehension and re-  
10 incarceration are permitted.

11 "Bail insurance company" means an insurer engaged in the  
12 business of writing bail appearance bonds through bonding agents  
13 and is subject to regulation by the insurance commissioner of  
14 the department of commerce and consumer affairs.

15 "Depositor of bail" means a person or entity that has  
16 deposited money, stocks, bonds, or other real or personal  
17 property to secure the release of a person charged with a crime  
18 or offense.

19 "Insurance commissioner" or "commissioner" means the  
20 insurance commissioner of the State.



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

4        SECTION 3. Chapter 804-14, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "**§804-14 Discharge of sureties.** Those who may have  
7 [~~become bail~~] given bail for anyone, may at any time discharge  
8 themselves, by surrendering him to the custody of any sheriff or  
9 chief of police or his authorized subordinate who shall take  
10 custody of the principle as required by section 804 - (a) (5)."

11        SECTION 4. Chapter 804-17, Hawaii Revised Statutes is  
12 amended to read as follows:

13        "**§804-17 Prompt appearance and response; default.** The  
14 names of all persons who have given bail or have become bound by  
15 recognizance to appear in any court, shall be called in open  
16 court on the day and at the time they are respectively bound to  
17 appear, and if they fail to appear promptly and respond thereto,  
18 their default shall be entered, and the entry shall be evidence  
19 of the breach of their appearance bonds or recognizances in  
20 proceedings to enforce or exonerate a forfeiture pursuant to  
21 this part."



1 SECTION 5. Section 804- 51, Hawaii Revised Statues, is  
2 amended to read as follows:

3 "**§804-51 Procedure for bail forfeiture**. Whenever the  
4 court, in any criminal cause, forfeits any bond or recognizance  
5 given in a criminal cause, the court shall immediately enter [~~up~~  
6 ~~judgment~~] a forfeiture in favor of the State and against the  
7 principal or principals [~~and surety or sureties~~], bail agent and  
8 bail insurance company on the bond, jointly and severally, for  
9 the full amount of the penalty thereof, and shall cause  
10 execution to issue thereon immediately after the expiration of  
11 thirty days from the date that notice is given via personal  
12 service or certified mail, return receipt requested, to the  
13 [~~surety or sureties on the bond,~~] bail agent and bail insurance  
14 company of the entry of the judgment in favor of the State,  
15 unless before the expiration of thirty days from the date that  
16 notice is given to the [~~surety or sureties on the bond~~] bail  
17 agent and bail insurance company of the entry of the [~~judgment~~]  
18 forfeiture in favor of the State, a motion or application of the  
19 principal or principals, [~~surety or sureties~~] bail agent and  
20 bail insurance company, or any of them, showing good cause why  
21 execution should not issue upon the [~~judgment~~] forfeiture, is  
22 filed with the court. If the motion or application, after a





1 hearing held thereon, is sustained, the court shall vacate the  
2 [~~judgment of~~] forfeiture and, if the principal surrenders or is  
3 surrendered pursuant to section 804-14 or section 804-41, return  
4 the bond or recognizance to the principal or surety, whoever  
5 shall have given it, less the amount of any cost, as established  
6 at the hearing, incurred by the State as a result of the  
7 nonappearance of the principal or other event on the basis of  
8 which the court forfeited the bond or recognizance. If the  
9 motion or application, after a hearing held thereon, is  
10 overruled, execution shall forthwith issue and shall not be  
11 stayed unless the order overruling the motion or application is  
12 appealed from as in the case of a final judgment.

13 This section shall be considered to be set forth in full in  
14 words and figures [~~in~~], and to form a part of, and to be  
15 included in, each and every bond or recognizance given in a  
16 criminal cause, whether actually set forth in the bond or  
17 recognizance, or not.

18 SECTION 6. 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.



1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2050.



**Report Title:**

Bail Bondsmen

**Description:**

Enacts provisions regulating the procedures and rights of bail agents in bail forfeiture cases. Effective July 1, 2050.  
(SB3068 HD1)

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

