
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 independent
18 action. If a defendant does not appear before the court and is



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

9 (1) A statement intended to inform the bail bondsmen of
10 the entry of forfeiture;

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

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

19 (d) A bail bondsmen, upon whom notice of a bail forfeiture
20 order has been served, shall have fifteen days after receipt of
21 notice of forfeiture to request a hearing to show cause why
22 judgment on the forfeiture should not be entered for the State



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

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



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

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

19 (h) A bail bondsmen shall be exonerated from liability
20 upon the bond by satisfaction of the bail forfeiture judgment,
21 surrender of the defendant, or order of the court. If the bail
22 bondsmen provides proof to the court that the defendant is in



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

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

17 (j) Upon the expiration of the stay of execution, the bail
18 forfeiture judgment shall be paid forthwith by the bail
19 bondsmen, if not previously paid, unless the defendant appears
20 in court, either voluntarily or in custody after surrender or
21 arrest, or the court enters an order granting an additional stay
22 of execution or otherwise vacates the judgment.



1 (k) If a bail forfeiture judgment is not paid on or before
2 the expiration date of the stay of execution, the name of the
3 bail bondsmen shall be placed on the record of the court that
4 entered the judgment. The bail bondsmen shall be prohibited
5 from executing any further bail bonds in this State until the
6 judgment giving rise to placement on the board is satisfied,
7 vacated, or otherwise discharged by order of the court.
8 If a bail forfeiture judgment remains unpaid for thirty days
9 after the name of the bonding agent is placed on the record, the
10 court shall send notice by certified mail to the bail insurance
11 company for whom the bonding agent has executed the bond that if
12 the judgment is not paid within fifteen days after the date of
13 mailing of the notice, the name of the bail insurance company
14 shall be placed on the board and the company shall be prohibited
15 from executing any further bail bonds in this State until the
16 judgment giving rise to placement on the board is satisfied,
17 vacated, or otherwise discharged by order of the court. A bail
18 bondsmen shall be removed from the record only after every
19 judgment for which the bail bondsmen was placed on the record is
20 satisfied, vacated, discharged, or stayed by entry of an
21 additional stay of execution. No bail bondsmen shall be placed
22 on the board in the absence of the required notice.



1 (l) The court may order that a bail forfeiture judgment be
2 vacated and set aside or that execution thereon be stayed upon
3 such conditions as the court may impose, if necessary.

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



1 bondsmen and is serving a sentence by that court, or if the
2 party has been arrested in the state where the obligation is
3 given and sent out of the State by the governor upon requisition
4 from another state or foreign jurisdiction, the case shall be
5 considered as an operation of law.

6 (n) When a bail bondsmen enters into a surety agreement,
7 it shall be done under a calculated risk, so that events which
8 materially increase that risk have the effect of terminating the
9 obligation.

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



1 all necessary and actual costs associated with such extradition
2 shall be borne by the surety up to the amount of the bond.

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

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

18 (r) The automatic stay of execution upon a bail forfeiture
19 judgment shall expire pursuant to its terms unless the defendant
20 appears and surrenders to the court having jurisdiction or
21 satisfies the court that appearance and surrender by the
22 defendant was impossible and without fault by the defendant, in



1 which case the court may order that a forfeiture be set aside
2 and judgment vacated.

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

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

19 SECTION 3. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Bail Bondsmen

Description:

Enacts provisions regulating the procedures and rights of bail bondsmen in bail forfeiture cases. Effective 07/01/50. (SD1)

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

