



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**

Representative Gilbert S.C. Keith-Agaran, Chair

Representative Karl Rhoads, Vice Chair

Friday, February 10, 2012, 2:00 p.m.

State Capitol, Conference Room 325

by

Calvin C. Ching

Acting Deputy Chief Court Administrator

District Court of the First Circuit

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**Bill No. and Title:** House Bill No. 2868, Relating to Bail

**Purpose:** To enact provisions regulating the procedures and rights of bail bondsmen in bail forfeiture cases.

**Judiciary's Position:**

Although the Judiciary appreciates the intent of House Bill No. 2868, because of the regulatory and logistical requirements that would be imposed on the Judiciary by this bill, the Judiciary is not able to support House Bill No. 2868 in its current form. This bill proposes to add a new section to HRS Chapter 804 and portions of the bill appear to be in conflict with the provisions of bond forfeiture procedures set forth in HRS § 804-51.

The bill will require the Judiciary to create a board for recording and disseminating the names of those compensated sureties who are prohibited from posting bail bonds in the State due to unpaid judgments. The Department of Commerce and Consumer Affairs (DCCA), however, is the proper regulatory agency for oversight and disseminating information about individuals licensed by the DCCA. It should be noted that Rule 46 of the Hawaii Rules of Penal Procedure (HRPP) states in part that the "declaration or affidavit (of the bail agent) shall identify the insurer, provide the agent's and insurer's license numbers, attest the agent and insurer are currently licensed and in good standing with the Insurance Commissioner of the State of Hawaii and attest the agent and the insurer are in compliance with Hawaii law governing bail bonds."



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House Bill No. 2868 provides multiple opportunities for bail bondsmen to have a forfeiture judgment set aside. This would seem to defeat the purpose of bail and further complicate the courts process to effect forfeiture collection.

Other concerns we wish to point out are as follows:

1. Subsection (c) of the section entitled "Prohibited compensated sureties; recording" states, "If the bail forfeiture judgment is not paid within fifteen days after the name of a bail insurance company has been placed on the board, the court shall also order the bail insurance company on the bond to pay the judgment after notice and hearing."

Forfeiture judgments are issued jointly and severally against both the bail agent and surety (i.e., the bail insurance company). Therefore, the surety is already obligated to make payment on the judgment. This section will require the court to conduct additional hearings to issue judgments against the surety.

2. The section entitled "Enforcement of Bonds" conflicts with provisions set forth in HRS § 804-51.
3. Subsection (a) (2) of the section titled "Exoneration of bail bond" states that the person executing bail shall be exonerated if the defendant is apprehended or surrendered to the court within one year after payment of the judgment." This provision appears to be inconsistent with the purpose of bail as defined by HRS § 804-1, which provides: "Bail, or the of giving of bail, is the signing of the recognizance by the defendant and the defendant's surety or sureties, conditioned for the appearance of the defendant at the session of a court of competent jurisdiction to be named in condition and to abide by the judgment of the court."

Following any order of forfeiture, the bondsman should not be exonerated of its obligation to produce the defendant until a hearing has been conducted and the defendant has appeared or there are sufficient extenuating circumstances to excuse defendant's appearance. Current procedures correctly place the burden on the bondsman to file the appropriate motion. Moreover, the prosecutor should be afforded the opportunity to respond.

Additionally, this provision would create administrative difficulties for the court's fiscal operations if forfeited bail is required to be remitted within one year. The State Comptroller's Memorandum 1997-26 states, "Refund in excess of revenues collected must be charged to a current fiscal year appropriation."



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We would also like to note that the various time frames set by this bill will make it extremely difficult and time consuming for Judiciary staff to constantly monitor the compliance/non-compliance of these bond companies, as well as all of the logistical and fiscal recordkeeping that will be required to accurately maintain the board.

The Judiciary acknowledges that methods for improving compliance for payment of forfeited bonds are important, however, under the proposed provisions of House Bill No. 2868, we would respectfully request that the responsibilities for monitoring and sanctioning bond agents and bonding companies for non-compliance be part of DCCA's current regulatory authority.

Thank you for the opportunity to testify on this matter.

NEIL ABERCROMBIE  
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DIRECTOR

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Friday, February 10, 2012  
2 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 2868 – RELATING TO BAIL.**

TO THE HONORABLE GILBERT KEITH-AGARAN, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
("Department"). The Department supports the intent of this bill and offers the following  
comments.

The intent of this bill is create a new part in Hawaii Revised Statutes ("HRS")  
chapter 804 establishing a board listing bail agents who are prohibited from posting bail  
bonds in this State due to unpaid judgments.

This bill uses the terms "compensated surety" and "bail bonding agent". It is  
unclear whether "compensated surety" is referring to the insurance company and "bail  
bonding agent" is referring to the insurance producer.

The Department notes that the term "bail agent" is defined in HRS § 431:9N-101  
as follows:

"Bail agent" means a licensed insurance producer under article 9A who is  
appointed by an authorized surety insurer, furnishes bail for compensation in any

court in this State, and has the power of attorney to execute or countersign bail bonds in connection with judicial proceedings. "Bail agent" shall not include a person who is a full-time salaried officer or employee of an insurer or a person who pledges United States currency, a United States postal money order, a cashier's check, or other property as security for a bail bond in connection with a judicial proceeding, whether for compensation or otherwise.

Since the Insurance Code contains an article addressing bail agents and sureties in Article 9N, HRS chapter 431, the Department believes it would be beneficial to have consistent terms.

We thank this Committee for the opportunity to present testimony on this matter.

Testimony for HB2868 on 2/10/2012 2:00:00 PM

**Testimony for HB2868 on 2/10/2012 2:00:00 PM**

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**Sent:** Thursday, February 09, 2012 2:23 PM

**To:** JUDtestimony

**Cc:** mim@dcca.hawaii.gov

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Testimony for JUD 2/10/2012 2:00:00 PM HB2868

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Martha Im  
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Submitted on: 2/9/2012

Comments: