



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, March 13, 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

Bill No. and Title: Senate Bill No. 3068, S.D. 1, Relating to Bail.

Purpose: 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 July 1, 2050.

Judiciary's Position:

Although the Judiciary appreciates the intent of Senate Bill No. 3068 S. D. 1, because of the regulatory and logistical requirements that would be imposed on the Judiciary by this bill, the Judiciary is not able to support Senate Bill No. 3068 S.D. 1 in its current form. This bill proposes to add two new sections to Sec. 804 HRS and portions of the bill appear to be in conflict with the provisions of bond forfeiture procedures as set forth in Sec. 804-51 and the license denial, non-renewal, suspension or revocation provisions of Sec. 431:9N-102.

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 dissemination of information regarding individuals licensed by the DCCA. It should be noted that Rule 46 of the Hawaii Rules of Penal Procedure (HRPP) recognizes DCCA's regulatory role by providing that the "declaration of affidavit 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



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of the State of Hawaii, and attest the agent and the insurer are in compliance with Hawaii law governing bail bonds.

Senate Bill No.3068, S.D. 1 provides multiple opportunities for bail bondsmen to have the forfeiture judgment set aside. Providing bondsmen with this many opportunities to have the forfeiture judgment vacated defeats the whole purpose of bail and further complicates the courts' process to effect forfeiture collection.

The total amount of forfeited bail bonds that are currently eligible for collection is \$1,559,431. This includes all Circuit, District and Family courts statewide, and, bondsmen are in various stages of collection. This bill as proposed complicates the forfeiture and enforcement process and increases the opportunities to not pay, delay payment, or claim a refund, possibly as an unbudgeted State expense. Sec. 804-51 HRS presently requires a 30-day bond forfeiture process. This bill proposes a forfeiture procedure which could take up to 515 days and an additional 60 days for enforcement. Additional time delays will exacerbate the courts' ability to effectuate collection and provide additional opportunities for non-compliance by delinquent bondmen.

Allowing bond exoneration after a defendant's failure to appear defeats the purpose of posting bond and absolves bond sureties of their responsibilities. As an example, Section (p) of this bill requires the court to vacate the judgment and remit the amount paid on the bond for up to one year after payment of the forfeiture judgment. This provision appears to be inconsistent with the purpose of bail as defined in Sec. 804-1 HRS, which provides: "Bail, or the 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 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.

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 compliance/non-compliance of bond companies, as well as all of the logistical and fiscal record keeping that will be required to accurately maintain the board. It should be noted that the Judiciary has multiple facilities throughout the state and maintaining and updating any board will pose significant operational challenges. These are in essence regulatory responsibilities, which would be most efficiently performed by DCCA, which as the necessary expertise and resources.



As an example, we note the following time frames proposed in the bill:

I. Proposed Forfeiture Process

Section (c)(3) - judgment shall be entered upon expiration of **thirty (30)** days following the entry of forfeiture.

Section (e) - judgment automatically stayed for no more than **one hundred twenty (120)** days after entry of forfeiture.

Section (i) - Execution of bail forfeiture judgment automatically stayed **ninety (90)** days from date of judgment.

Section (p) - Within **one year (365 days)** judgment can be vacated and amount paid on bond can be remitted.

Total Forfeiture process - Three steps and up to 515 days.

II. Proposed Enforcement Process

Section (k) - After **thirty (30)** days on the board Court will send notice via certified mail. If judgment is not paid within **fifteen (15)** days insurance company is notified.

Section (s) - If judgment is not paid within **fifteen (15)** days after insurance company placed on the board, Insurance commissioner shall order payment.

Total Enforcement Procedure - Two steps and up to 60 days.

III. Present Forfeiture Procedures

Sec. 804-51 HRS - immediate entry of judgment in favor of the State and execution within **thirty (30)** days.

What has proven to be especially problematic is that bondsmen will often hinder the forfeiture process and evade service simply by ignoring certified mail sent by the court. Under the provisions of this bill, due to the additional steps that will be required of court staff, additional resources may be needed.

The Judiciary acknowledges that it is important to seek improvements in the methods for ensuring compliance for payment of forfeited bonds, however, under the provisions of



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Senate Bill No. 3068 S.D. 1, we would respectfully request that 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

Tuesday, March 13, 2012
2 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 3068, S.D. 1— 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 version of this version of the bill is add two new sections to
Hawaii Revised Statutes ("HRS") chapter 804 titled "Bail Bond Agents; Sureties" to
establish enforcement procedures for bail bondsmen and bail bond forfeitures. The
S.D. 1 contains a defective effective date of July 1, 2050.

This bill defines and uses the term "bail bondsmen".

"Bail bondsmen" is defined on page 1, lines 4-6, as "a person or entity that gives
bail, as defined in section 804-1 and as qualified under section 804-10.5." It may be
beneficial to refer to the definition in HRS § 431:9N-101 which defines "bail agent" 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.

Bail agents and surety insurers are regulated by the Commissioner. The Commissioner may take enforcement action against bail agents for the failure to pay the bail forfeiture judgment, pursuant to HRS §§ 431:9A-112(a), 431:9N-102), and 431:2-203. The Commissioner may take enforcement action against the surety insurer for failure to pay any final judgment rendered upon it upon any bond issued or guaranteed by it, pursuant to HRS §§ 431:3-217 and 431:2-203.

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 use consistent statutory terms where possible.

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

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Chair Gilbert S.C. Keith-Agaran
Vice Chair Karl Rhoads

Tuesday, March 13, 2012, 2:00 p.m.
State Capitol, Conference Room 325

Bill No. and Title: Senate Bill No. 3068, Relating to Bail Bonds.

Purpose: The purpose of this bill is to enact provisions regulating the procedures and rights of bail bondsmen in bail forfeiture cases.

Position: Strong Support with Amendments.

Exodus Bail Bonds is a licensed bail agency that has been in operation within the State of Hawaii since 2005. This bill will have a substantial impact on our conduct and operation of business.

The purpose of bail, as defined by statutory law and case law respectively, is to secure the presence of the defendant in court. It is not meant for the state to profit from the non-appearance of the defendant at court.

This bill would give the bail agency more time to locate and apprehend the defendant. Currently, HRS 804-51 has been interpreted to provide the bail agency with only thirty (30) days from the receipt of the judgment of forfeiture to locate and surrender the defendant. More time is often required for the bail agency to conduct a thorough search. It is absolutely reasonable to automatically stay the judgment of forfeiture for ninety (90) days from the entry of the judgment. We support a proposal to increase the search period to one hundred eighty (180) days, which is the time allowed in California. This will allow the bail agency to either apprehend the defendant or have the defendant to surrender voluntarily. This in no way relieves the bail agency of liability should it fail to locate and apprehend the defendant within the prescribed time.

This bill clearly defines when a bail agency may be discharged from liability and when a bail forfeiture may be set aside. The prevailing laws are ambiguous regarding this situation. We believe that the present language will eliminate confusion.

Moreover, a disproportionate number of forfeitures result from “acts of God,” “acts of state,” and/or “acts of law” as defined by this legislation. We believe that this will produce consistent judicial rulings that will not infringe upon the rights of a defendant who was prevented from appearing at court because of illness, detention at a correctional facility, or arrest.

We strongly support the passage of this bill with the following amendments.

Subsection (d). ***We have strong objections to this part of the bill.*** Currently, HRS 804-51 provides the bail agency thirty (30) days to file a motion to set aside the judgment of forfeiture. The current time frame is in itself burdensome to the bail agency and decreasing the number of days to request a hearing would essentially penalize the bail agency without good cause. **We respectfully ask that this committee amend subsection (d) from fifteen (15) days to file a request for a hearing to thirty (30) days or longer.**

Subsection (k). ***We have strong objections to this part of the bill.*** We believe that this will complicate the regulation of surety companies within the State of Hawaii. Currently, bail agencies are licensed and regulated by the Department of Commerce and Consumer Affairs. By creating a database within the judiciary of prohibited bond agents, this will infringe upon the jurisdiction of the Insurance Commissioner and create an unnecessary layer of regulation. This would be extremely burdensome to the bail agency.

Furthermore, a surety company may be represented by more than one bail agency within the state. If a surety company is prohibited from filing a bail bond, it may unjustly penalize a bail agency that has no liability with the judiciary because of the actions of another bail agency that does have liability with the judiciary. **We respectfully request that subsection (k) be omitted from SB 3068.**

We respectfully request that this committee pass this bill and incorporate the amendments we have described.

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PROPOSED AMENDMENTS TO THE HOUSE COMMITTEE ON JUDICIARY

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Vice Chair Karl Rhoads

Tuesday, March 13, 2012, 2:00 p.m.
State Capitol, Conference Room 325

Bill No. and Title: Senate Bill No. 3068, Relating to Bail Bonds.

Purpose: The purpose of this bill is to enact provisions regulating the procedures and rights of bail bondsmen in bail forfeiture cases.

Proposed Amendments:

Proposed Amendment #1

(d) A bail bondsmen, upon whom notice of a bail forfeiture order has been served, shall have fifteen [thirty] days after receipt of notice of forfeiture to request a hearing to show cause why judgment on the forfeiture should not be entered for the State against the bail bondsmen. The request shall be granted by the court and a hearing shall be set within thirty days after entry of forfeiture or at the court's earliest convenience. At the conclusion of the hearing requested by the bail bondsmen, if any, the court may enter judgment for the State against the bail bondsmen, or the court may in its discretion order further hearings. Upon expiration of thirty days after the entry of forfeiture, the court shall enter judgment for the State against the bail bondsmen if the bail bondsmen did not request within fifteen days after receipt of notice of such forfeiture a hearing to show cause.

Proposed Amendment #2

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

~~If a bail forfeiture judgment remains unpaid for thirty days after the name of the bonding agent is placed on the record, the court shall send notice by certified mail to the bail insurance company for whom the bonding agent has executed the bond that if the judgment is not paid within fifteen days after the date of mailing of the notice, the name of the bail insurance company shall be placed on the board and the company shall be prohibited from executing any further bail bonds in this State until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court. A bail bondsmen shall be removed from the record only after every judgment for which the bail bondsmen was placed on the record is satisfied, vacated, discharged, or stayed by entry of an additional stay of execution. No bail bondsmen shall be placed on the board in the absence of the required notice.~~

WIKI WIKI BAIL BONDS, LLC

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HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON FINANCE
03/13/2012, 2:00 pm, RM 325,
SB 3068, RELATING TO BAIL

Members of the Finance Committee,

My name is Rocky R. Newton, owner of Wiki Wiki Bail Bonds. I am testifying IN OPPOSITION of this BILL 3068.

I am in agreeance there should be more accountability for bail bondsmen here in Hawaii. However the wording of this Bill and the timelines are not favorable to the State or the majority of bondsmen in Hawaii. I believe a more precise and generally acceptable Bill can and should be drafted which addresses the issues raised in this Bill in a more appropriate manner. The two bonding companies who presented this Bill only represent a minority of the bail agencies in Hawaii. The majority would rather OPPOSE this Bill and all sit down together to address this issue appropriately. I have personally spoke to 5 other bail agencies that OPPOSE this Bill and are attending the meeting for this Bill on 03/13/2012. Once again, the VAST MAJORITY of bail agencies in Hawaii DO NOT favor this Bill as it is being presented. Along with the JUDICIARY OPPOSING this Bill, it should indicate a need to take a deeper look at what is being presented.



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