

LATE TESTIMONY

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

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NOTICE OF HEARING

DATE: Tuesday, March 13, 2012
TIME: 2:00 PM
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

Testimony in favor of SB3068, SD1, Enacting Provisions Regulating Bail Bondspersons and Bail Forfeiture.

Presented by, James Waldron Lindblad for Professional Bail Agents of Hawaii.

SB 3068, SD1
(SSCR2479)
Status

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

JUD, FIN

1. Presently the judiciary has no means to prevent bail agents or their surety insurers who are not paying bail forfeitures from continuing to file bail bonds. This situation is not fair to the majority of bail agents and their surety insurers that are in financial compliance.
2. SB3068 addresses this issue by providing guidelines the judiciary must adhere to regarding the prompt payment of forfeited bail bonds posted by bail agents by preventing the continued competition from those bail agents and their surety insurers who fail to pay forfeited bail by placing their names on a board as contemplated by HRS 431-9N -101, Bail Agents; Sureties, Definitions, making them ineligible to write bail bonds.
3. SB3068 provides guidelines and needed clarity for our courts and judges in matters relating to forfeited bail, reemission of forfeited bail , timelines for exoneration of bail.

Please pass SB3068

DA KINE BAIL BONDS

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COMMITTEE ON JUDICIARY

Representative Gilbert S.C. Keith-Agaran, Chair

March 13, 2012, 2:00 PM, Rm. 325

SB 3068, SD1, Relating to Bail Bonds

Chair Agaran and Members of the Judiciary Committee,

We are Duane and Beth Chapman of Da Kine Bail Bonds, testifying in support of SB 3068, SD1, Relating to Bail Bonds, for the following reasons.

- This bill will streamline paper work procedures regarding forfeited bail bonds, creating an even playing field for all bail written.
- This bill creates an enforcement procedure as well as consequences for bail agents and their surety (insurance) companies for failure to pay bail forfeitures in a timely manner. The State is currently owed millions of dollars in uncollected forfeiture.
- This bill creates a process for the courts and jails to penalize a particular bail agent and their surety companies if they owe bail forfeiture in any jurisdiction by no longer allowing them to write any more bonds until they pay for their outstanding bonds. If they fail to pay, agents for that company in all jurisdictions will be “shut off” until they do pay.
- This bill creates additional incentives for bail agents to bring in their clients who have failed to appear in court in a timely manner, and gives the court the ability to release the bond without additional court hearings, which will help to clear court dockets of frivolous, ineffective appearances. Whenever a bondsman picks someone up after they have failed to appear in court, current policy and practice mandate that a new court date be set, costing our already over crowded courts valuable time. It also means increased attorneys’ fees, and affects bail agents and the co-signers on these bonds due to the delays in receiving collateral back.

We sincerely hope you will also support SB 3068, SD1 and mahalo for allowing us to testify.

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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 Opposition/Proposed 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.

We strongly oppose the passage of this bill unless the following amendments are made.

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 reject subsection (d) from fifteen (15) days to file a request for a hearing to within 60-90 days.**

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 rejected from SB 3068.**

We have strong objections to the fact that no “right to appeal” is included in this bill’s framework. The current law provides for appeal and stays the judgment of forfeiture until the appeal is decided. To eliminate the right to appeal will eliminate an essential part of the judicial process and is a violation of the bail agency’s constitutional rights.

However, if 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. Notification of the forfeiture should be certified mail to the bail agent only.

We respectfully request that this committee reject this bill and that the proposed amended be considered.