



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 7, 2012, 10:15 a.m.
State Capitol, Conference Room 016

by
Calvin C. Ching
Acting Deputy Chief Court Administrator
First Circuit

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.

Judiciary's Position:

The Judiciary respectfully opposes Senate Bill 3068. This bill proposes to add two new sections to Sec. 804, HRS and would contradict provisions of bond forfeiture procedures as set forth in Sec. 804-51, HRS.

The bill will require each court in the State to implement a system for recording and disseminating names of bail bondsmen who are prohibited from posting bail bonds in the State due to unpaid judgments. The Judiciary respectfully suggests that the Department of Commerce and Consumer Affairs (DCCA) is the proper regulatory agency for oversight and dissemination of information about individuals licensed by the DCCA. Rule 46 of the Hawaii Rules of Penal Procedure (HRPP) states in part 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 of the State of Hawaii and attest the agent and the insurer are in compliance with Hawaii law governing bail bonds.”

Senate Bill 3068 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. As defined in Sec. 804-1, HRS, "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..."

Additionally, we would like to point out several concerns regarding the provisions set forth in the section titled "Enforcement procedures for bail bondsmen."

1. Subsection (c). There is language that states that the "notice of the bail forfeiture order shall be served" on the bonding agent via certified mail and the bail insurance company by regular mail. However, the response time for the bail bondsmen states "fifteen days after receipt of notice. "If the bondsmen never accepts the mail, no service is effectuated and the clock will never start.
2. Subsection (d) states that the court shall enter judgment against the bail bondsmen if the bondsmen did not request a hearing after the bail forfeiture order. However, subsection (i) states that execution of the judgment shall be stayed for an additional ninety days after that.
3. Subsection (f) places the burden on the courts to set aside the bail forfeiture. This should be the bondsman's responsibility as the court would not keep track of when a defendant has other cases for which bond may have been forfeited.
4. Under Subsection (j), the bondsman is not obligated to pay the judgment if the defendant surrenders during that time period.
5. Following any order of forfeiture, the bondsman should not be exonerated of his obligation to produce the defendant until a hearing has been conducted and the defendant has appeared or there are sufficient extenuating circumstances to excuse the 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.
6. Subsection (k), states, ". . . if the judgment is not paid within fifteen days after the date of mailing of said 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 the placement on the board is satisfied . . ."we would have concerns whether this information can be easily communicated on a timely basis.



- Also, if the bail insurance companies are prohibited from executing bail bonds, the bail bondsmen are also prohibited from doing so. Some companies are the sureties for several bail bondsmen, e.g., DaKine, Island Bail Bonds, and Bail Hawaii. Thus, there could be a possibility where the bulk of the bondsmen may be prohibited from executing bail bonds.
7. The purpose of bail is established in the statute and by case law. An Act of God is broad and ambiguous as noted in (subsection (m)). It is for the judge to decide whether there is sufficient reason to find justification for non-appearance as a claim of sickness alone should not be considered to be an Act of God. This would open the door for non-appearances by anyone, not only those that have been bonded, to claim sickness as an Act of God as a reason for not appearing in court.
 8. Subsection (n) makes it unnecessarily easy to release a bondsman from his obligations based on Sec.804-1, HRS. It is unclear what events would materially increase risk that would result in terminating an obligation.
 9. Pursuant to subsection (p) on page 9, the judgment could still be vacated even one year after the entry of the judgment. Also, the requirement in subsection (p) for the court to reimburse the bondsmen would create enormous problems for the courts' fiscal offices. Any refunding of the bail forfeited would come out of general funds and exacerbate problems with the courts' already depleted budgets.
 10. The various time frames set by this bill will make it extremely difficult and time consuming for Judiciary staff to monitor the compliance and non-compliance of these bond companies. Staff will be required to constantly monitor the status of payment by bond companies on forfeited bonds in order to update the board.

The Judiciary acknowledges that methods for improving compliance for payment of forfeited bonds are important, however, Senate Bill 3068 would place undue burdens on the courts to monitor and sanction bond agents and bonding companies for non-compliance, accordingly those functions should not be with the courts.

Thank you for the opportunity to testify on this matter.