
A BILL FOR AN ACT

RELATING TO BAIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that bail and bail agents
2 provide an extraordinarily valuable service to law enforcement
3 and accused persons alike. The bail clause of the Eighth
4 Amendment of the United States Constitution embodies the long-
5 standing Anglo-American tradition that favors pretrial release
6 of accused persons. Pretrial release on bail frees up crowded
7 jail space and permits defendants to participate more fully in
8 their defense. Bail agents, backed by surety insurance
9 companies, make possible the pretrial release of more than two
10 million defendants annually, at no expense to the taxpayers, by
11 providing assurances that people charged with crimes will appear
12 as scheduled to answer those charges.

13 The legislature also finds that persons authorized to
14 apprehend bail fugitives have very broad common law powers to
15 arrest a person. To protect against abuses, many states have
16 enacted laws regulating the conduct of persons who apprehend
17 bail fugitives. Four states have banned the practice outright,



1 twelve others require licenses, and others restrict certain
2 types of conduct.

3 The purpose of this Act is to regulate the conduct of
4 persons who apprehend bail fugitives. This Act is primarily
5 directed towards presently unregulated bail fugitive recovery
6 persons. This Act also reaches bail bond agents who are already
7 regulated in other aspects. This Act also requires the
8 discharge of surety only after a breach of one or more
9 conditions of bail set forth in sections 804-7.1 and 804-7.4,
10 Hawaii Revised Statutes, or if the defendant remains
11 incarcerated for offenses other than the subject of the surety.

12 SECTION 2. Chapter 804, Hawaii Revised Statutes, is
13 amended by adding a new part to be appropriately designated and
14 to read as follows:

15 **"PART . BAIL FUGITIVE APPREHENSION**

16 **§804-A Definitions.** As used in this part, unless the
17 context otherwise requires:

18 "Bail agent" or "bail bond agent" shall be as defined in
19 part .

20 "Bail fugitive" means a defendant in a pending criminal
21 case who has been released from custody under a financially
22 secured appearance, cash, or other bond and has had that bond



1 declared forfeited, or a defendant in a pending criminal case
2 who has violated a bond condition whereby apprehension and re-
3 incarceration are permitted.

4 "Bail fugitive recovery person" means a person who:

- 5 (1) Is provided written authorization by the bail agent or
6 depositor of bail and is contracted to investigate,
7 surveil, locate, and arrest a bail fugitive for
8 surrender to the appropriate court, correctional
9 facility, or police department; or
- 10 (2) Is employed to assist a bail agent or depositor of
11 bail to investigate, surveil, locate, and arrest a
12 bail fugitive for surrender to the appropriate court,
13 correctional facility, or police department.

14 "Depositor of bail" means a person or entity that has
15 deposited money or bonds to secure the release of a person
16 charged with a crime or offense, as provided in part .

17 "Law enforcement officer" has the same meaning as in
18 section 710-1000.

19 **§804-B Qualifications of bail fugitive recovery person.**

20 (a) No person, other than a law enforcement officer, shall be
21 authorized to apprehend a bail fugitive, nor be allowed to
22 arrest a defendant, unless the person is:



- 1 (1) A bail agent;
- 2 (2) A depositor of bail;
- 3 (3) A private investigator licensed in the State; or
- 4 (4) A bail fugitive recovery person who complies with the
- 5 requirements of this part.

6 (b) A bail fugitive recovery person shall:

- 7 (1) Be at least eighteen years of age;
- 8 (2) Have no felony conviction within the last fifteen
- 9 years;
- 10 (3) Register with the attorney general;
- 11 (4) Submit to fingerprinting and background checks; and
- 12 (5) Comply with all laws while apprehending a bail
- 13 fugitive.

14 (c) Upon registration with the attorney general, bail
15 fugitive recovery persons shall carry on the person, at all
16 times in the course of performing the person's duties under this
17 part, photographic identification cards attesting to
18 registration. The attorney general shall be responsible for
19 registration and issuing identification cards.

20 **§804-C Documentation required.** (a) Before apprehending a
21 bail fugitive, a bail fugitive recovery person authorized to
22 apprehend a bail fugitive shall have in the person's possession



1 proper documentation of authority to apprehend issued by the
2 bail agent or depositor of bail. The document conferring
3 authority to apprehend the bail fugitive shall include the
4 following:

- 5 (1) The name of the individual authorized to apprehend a
6 bail fugitive and any fictitious or trade name used by
7 the person;
- 8 (2) The address of the principal office of the individual
9 authorized to apprehend a bail fugitive; and
- 10 (3) The name and principal business address of the bail
11 agency, surety company, or other party contracting
12 with the bail fugitive recovery person.

13 (b) At the time of surrendering the bail fugitive to the
14 custody of the chief of police, the chief's authorized
15 subordinate, or a public safety officer, the bail fugitive
16 recovery person shall provide a certified copy of the bond that
17 was posted on behalf the person being surrendered.

18 (c) There is no prior notice requirement for exoneration
19 of the surety when the principal is surrendered in open court.

20 **§804-D Prohibited acts.** A person authorized to apprehend
21 a bail fugitive under section 804-B(1) to (4) shall not
22 represent or imply, in any manner, that the person is a sworn



1 law enforcement officer, provided that nothing in this section
2 shall prohibit the wearing of a uniform or bulletproof vest.

3 Any badge or identification used by the person in
4 apprehending a bail fugitive shall clearly reflect "Bail
5 Enforcement" or "Bounty Hunter".

6 **§804-E Registration required.** On and after January 1,
7 2008, a bail agent or depositor of bail, prior to hiring or
8 contracting with a bail fugitive recovery person, shall ensure
9 that the bail fugitive recovery person is registered with the
10 attorney general and complies with the criminal background check
11 required by section 804-F.

12 **§804-F Criminal background checks.** (a) The attorney
13 general shall adopt rules pursuant to chapter 91 to ensure the
14 reputable and responsible character of an applicant for
15 registration as a bail fugitive recovery person.

16 (b) An applicant for registration as a bail fugitive
17 recovery person, and all current and prospective employees of
18 the applicant, shall be subject to criminal history record
19 checks, in accordance with section 846-2.7, and shall provide
20 consent to the attorney general to obtain criminal history
21 record information for verification.



1 (c) The attorney general is authorized to obtain criminal
2 history record information through the Hawaii criminal justice
3 data center and the Federal Bureau of Investigation.

4 (d) The applicant and all current and prospective
5 employees subject to a criminal history record check shall
6 provide to the attorney general:

7 (1) Consent to obtain the applicant's or employee's
8 fingerprints and conduct the criminal history record
9 check;

10 (2) Identifying information required by the Federal Bureau
11 of Investigation; and

12 (3) A statement indicating whether the applicant or
13 employee has ever been convicted of a crime.

14 (e) No person shall be eligible for registration if the
15 person has been convicted of, or pleaded guilty or nolo
16 contendere to, any felony within the last fifteen years prior to
17 registration.

18 **§804-G Administration.** This part shall be administered by
19 the attorney general. The attorney general may adopt rules
20 under chapter 91 to implement this part."



1 SECTION 3. Chapter 804, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . BAIL BOND AGENTS; SURETIES**

5 **§804-K Definitions.** As used in this part, unless the
6 context otherwise requires:

7 "Bail agent" or "bail bond agent" means any person who
8 furnishes bail for compensation in any court in this State and
9 who is appointed by an insurer by power of attorney to execute
10 or countersign bail bonds in connection with judicial
11 proceedings. "Bail agent" shall not include a person who is a
12 full-time salaried officer or employee of an insurer or a person
13 who pledges United States currency, a United States postal money
14 order, a cashiers check, or other property as security for a
15 bail bond in connection with a judicial proceeding, whether for
16 compensation or otherwise.

17 "Bail fugitive" shall be as defined in section 804-A.

18 "Bail fugitive recovery person" means a person who conforms
19 to the requirements of part .

20 "Bail insurance company" means an insurer engaged in the
21 business of writing bail appearance bonds through bonding agents



1 and is subject to regulation by the insurance division of the
2 department of commerce and consumer affairs.

3 "Bail recovery" means actions taken by a person other than
4 a law enforcement officer to apprehend an individual or take an
5 individual into custody because of the failure of the individual
6 to comply with bail bond requirements.

7 "Compensated surety" means any person in the business of
8 writing bail appearance bonds who is subject to regulation by
9 the insurance division, including bail bond agents and bail
10 insurance companies. Nothing in this paragraph shall be
11 construed to authorize bail insurance companies to write bail
12 bonds except through licensed bail bond agents.

13 "Depositor of bail" means a person or entity that has
14 deposited money or bonds to secure the release of a person
15 charged with a crime or offense.

16 "Insurance commissioner" or "commissioner" means the
17 insurance commissioner of the State.

18 "On the board" means that the name of a compensated surety
19 has been publicly posted or disseminated by a court as being
20 ineligible to write bail bonds.

21 **§804-L Bail agent license; qualifications.** (a) No
22 person shall qualify to be a bail bond agent unless the person



1 is licensed pursuant to this part and is appointed to represent
2 an insurance company.

3 (b) No firm, partnership, association, or corporation
4 shall be licensed as a bail bond agent.

5 (c) No person engaged as a law enforcement or judicial
6 officer, jailer, or court clerk shall be licensed as a bail bond
7 agent or bail agency.

8 **§804-M License required; expiration.** (a) No person may
9 act, or offer or advertise as being able to act, as a bail bond
10 agent unless the person is licensed pursuant to this part.

11 (b) Each licensee's license shall expire biennially on
12 January 1 unless sooner suspended or revoked by the insurance
13 commissioner. The insurance commissioner may suspend or revoke
14 a bail bond agent license if the insurer employing the bail bond
15 agent notifies the insurance commissioner that the insurer has
16 cancelled the licensee's authority to act for or in behalf of
17 the insurer.

18 (c) The insurance commissioner shall prepare and deliver
19 to each licensee an identification card showing the name,
20 address, and classification of the licensee. The identification
21 card shall clearly state that the person is a licensed bail
22 agent.



1 (d) The insurance commissioner shall annually notify each
2 bail bond agent in writing regarding changes to the state laws
3 regarding the regulation of bail bond agents.

4 **§804-N Names.** (a) Any bail agent using an assumed name,
5 including without limitation a trade name or fictitious name,
6 under which the bail agent conducts business shall register the
7 name with the insurance commissioner prior to using the assumed
8 name.

9 (b) The insurance commissioner shall not accept
10 registration of any name that is similar to another currently
11 used by another licensed bail agent, that would tend to be
12 misleading to the public, or that is identical or similar to the
13 name of any insurance producer whose license has been revoked or
14 suspended.

15 (c) Every bail agent licensee shall promptly file with the
16 commissioner a written notice of any change in or
17 discontinuation of the use of any name.

18 (d) The insurance commissioner may adopt rules pursuant to
19 chapter 91 necessary to implement the provisions of this
20 section.

21 **§804-O License denial, suspension, revocation, or**
22 **termination.** (a) The insurance commissioner may place on



1 probation, suspend, revoke, refuse to continue or renew, or
2 refuse to issue a bail agent license if, after notice and
3 hearing, the insurance commissioner finds any one or more of the
4 following:

- 5 (1) Any incorrect, misleading, incomplete, or materially
6 untrue information in the license application;
- 7 (2) Any cause for which issuance of the license could have
8 been refused had it then existed and been known to the
9 commissioner at the time of issuance;
- 10 (3) Violation of, or noncompliance with, any insurance law
11 or violation of any lawful rule, order, or subpoena of
12 the commissioner;
- 13 (4) Obtaining or attempting to obtain the license through
14 misrepresentation or fraud;
- 15 (5) Improperly withholding, misappropriating, or
16 converting to the licensee's or applicant's own use
17 any moneys or property belonging to policyholders,
18 insurers, beneficiaries, or others received in the
19 course of the business of insurance;
- 20 (6) Misrepresentation of the terms of any actual or
21 proposed insurance contract or application for
22 insurance;



- 1 (7) Conviction of a felony or misdemeanor involving moral
2 turpitude. For the purposes of this paragraph, "moral
3 turpitude" shall include any sexual offense against a
4 child;
- 5 (8) Commission of any unfair trade practice or fraud;
- 6 (9) The use of fraudulent, coercive, or dishonest
7 practices or demonstrating incompetence,
8 untrustworthiness, or financial irresponsibility in
9 this State or elsewhere;
- 10 (10) Forgery of another's name on an application for
11 insurance or to any document related to an insurance
12 transaction;
- 13 (11) Cheating on an examination, including but not limited
14 to improperly using notes or any other reference
15 material to complete an examination for an insurance
16 license;
- 17 (12) Failure to fully meet the licensing requirements; or
- 18 (13) Knowingly accepting insurance business from a person
19 who is not licensed.
- 20 (b) The insurance commissioner shall deny, suspend,
21 revoke, or refuse to renew, the license of any person engaged in



1 the business of bail bond agent for any of the following
2 reasons:

3 (1) Knowingly failing to comply with or knowingly
4 violating any provisions of this part or of any proper
5 order or rule of the insurance commissioner or any
6 court of this State where the licensee knew or
7 reasonably should have known of the provisions, order,
8 or rule;

9 (2) Any activity prohibited in statute;

10 (3) Failure to satisfy, pay, or otherwise discharge a bail
11 forfeiture judgment after having the bail agent's name
12 placed on the board, for more than forty-five
13 consecutive days for the same forfeiture;

14 (4) Conviction of a felony, a guilty plea to a felony, or
15 a plea of nolo contendere to a felony within the last
16 ten years, regardless of whether the conviction or
17 plea resulted from conduct in or conduct related to
18 the bail bond business;

19 (5) Failure to report, to preserve without use and retain
20 separately, or to return collateral taken as security
21 on any bond to the principal or depositor of the
22 collateral;



- 1 (6) Failure to pay a final, nonappealable judgment award
2 for failure to return or repay collateral received to
3 secure a bond;
- 4 (7) Hiring, contracting with, or paying compensation to
5 any individual for bail recovery services in violation
6 of the provisions of part ;
- 7 (8) Continuing to execute bail bonds in any court in this
8 State while on the board, where the bail forfeiture
9 judgment that resulted in being placed on the board
10 has not been paid, stayed, vacated, exonerated, or
11 otherwise discharged;
- 12 (9) Paying, directly or indirectly, any commission,
13 service fee, brokerage, or other valuable
14 consideration to any person selling, soliciting, or
15 negotiating bail within this State unless, at the time
16 the services were performed, the person was a duly
17 licensed bail agent under this part for the
18 performance of the services.
- 19 (c) If the insurance commissioner denies, suspends,
20 revokes, or refuses to renew any license, the aggrieved person
21 shall be given an opportunity for a hearing subject to judicial
22 review.



1 (d) The insurance commissioner, in lieu of or in addition
2 to any other disciplinary action permitted in this section, may
3 assess an administrative penalty upon the licensee. The
4 administrative penalty shall be no less than \$300 and no more
5 than \$1,000 for each instance of violation. Any monetary
6 assessment shall be deposited into the general fund of the
7 State.

8 **§804-P Prohibited activities; penalties.** (a) It is
9 unlawful for any licensed bail agent to:

- 10 (1) Specify, suggest, or advise the employment of any
11 particular attorney to represent the licensee's
12 principal;
- 13 (2) Pay a fee or rebate or give or promise to give
14 anything of value to a jailer, police officer, law
15 enforcement officer, clerk, deputy clerk, any other
16 employee of any court, district attorney or any of the
17 district attorney's employees, or any person who has
18 power to arrest or to hold any person in custody;
- 19 (3) Pay a fee or rebate or give anything of value to an
20 attorney in bail bond matters, except in defense of
21 any action on a bond or as counsel to represent the



- 1 bail bond agent or the agent's representative or
2 employees;
- 3 (4) Pay a fee or rebate or give or promise to give
4 anything of value to the person on whose bond the
5 licensee is surety;
- 6 (5) Except for the fee received for the bond, to fail to
7 return any collateral or security within ten working
8 days after receipt of a copy of the court order that
9 results in a release of the bond by the court, unless
10 the collateral also secures other obligations. A copy
11 of the court order shall be provided to the bail agent
12 in Hawaii or the company, if any, for whom the bail
13 agent works whether in Hawaii or out-of-state, or
14 both, by the person for whom the bond was written;
- 15 (6) Accept anything of value from a person on whose bond
16 the licensee is surety or from others on behalf of the
17 person except the fee or premium on the bond, but the
18 bail bond agent may accept collateral security or
19 other indemnity if:
- 20 (A) No collateral or security in tangible property is
21 taken by pledge or debt instrument that allows



- 1 retention, sale, or other disposition of the
2 property upon default;
- 3 (B) No collateral or security interest in real
4 property is taken by mortgage or any other
5 instrument unless the bail bond agent's interest
6 in the property is limited to the amount of the
7 bond;
- 8 (C) The collateral or security taken by the bail bond
9 agent is not pledged directly to any court as
10 security for any appearance bond; and
- 11 (D) The person from whom the collateral or security
12 is taken is issued a receipt describing the
13 condition of the collateral at the time it is
14 taken into the custody of the bail bond agent;
- 15 (7) Coerce, suggest, aid and abet, offer promise of favor,
16 or threaten any person on whose bond the licensee is
17 surety or offers to become surety to induce that
18 person to commit any crime;
- 19 (8) Act as a bail bond agent in any court of record in
20 this State while the name of the licensee is on the
21 board, or under any circumstance where a licensee has
22 failed to pay a bail forfeiture judgment after all



1 applicable stays of execution have expired and the
2 bond has not been otherwise exonerated or discharged;

3 (9) For any one licensee to have more than one bond posted
4 at any one time and, in any single case, on behalf of
5 any one person (no stacking powers);

6 (10) Fail to issue to the person from whom collateral or
7 security is taken a receipt that includes a
8 description of the collateral or security at the time
9 it is taken into the custody of the bail bond agent;

10 (11) Fail to post a bond within twenty-four hours of
11 receipt of full payment or a signed contract for
12 payment, or if the bond is not posted within twenty-
13 four hours of receipt of full payment or a signed
14 contract for payment, failure to refund all moneys
15 received, release all liens, and return all collateral
16 within forty-eight hours of receipt of the payment or
17 contract.

18 (b) Any licensee who violates any provision of this
19 section is guilty of a misdemeanor and, upon conviction thereof,
20 shall be punished by a fine of not more than \$1,000, or by
21 imprisonment for not more than one year, or by both. Any
22 criminal penalty prescribed in this section for a violation of



1 this section shall be in addition to, and not exclusive of, any
2 other applicable penalty prescribed by law.

3 (c) Any person who acts or attempts to act as a bail bond
4 agent and who is not licensed as such under this part is guilty
5 of a misdemeanor and, upon conviction thereof, shall be punished
6 by a fine of not more than \$1,000, or by imprisonment for not
7 more than one year, or by both.

8 **§804-Q Fiduciary responsibilities.** (a) All premiums
9 belonging to insurers and all unearned premiums belonging to
10 insureds received by a bail agent licensed under this part shall
11 be treated by the bail agent in a fiduciary capacity. The
12 insurance commissioner may adopt rules pursuant to chapter 91
13 relating to the treatment of these premiums.

14 (b) All premiums received, less commissions if authorized,
15 shall be remitted to the insurer on or before the contractual
16 due date or, if there is no contractual due date, within forty-
17 five days after receipt.

18 (c) All returned premiums received from insurers or
19 credited by insurers to the account of the bail agent shall be
20 remitted to or credited to the account of the person entitled
21 thereto within thirty days after the receipt or credit.



1 (d) If any bail agent has failed to account for any
2 collected premium to the insurer more than forty-five days after
3 the contractual due date or, if there is no contractual due
4 date, more than ninety days after receipt, the insurer shall
5 promptly report the failure to the insurance commissioner in
6 writing.

7 (e) Every insurer shall remit unearned premiums to the
8 insured or shall otherwise credit the account of the bail agent,
9 as soon as is practicable after entitlement to the premiums has
10 been established, but in no event more than forty-five days
11 after the effective date of any cancellation or termination
12 effected by the insurer or after the date of entitlement thereto
13 as established by notification of cancellation or of termination
14 or as otherwise established. It shall be the responsibility of
15 any bail agent having knowledge of a failure on the part of any
16 insurer to comply with this subsection to promptly report the
17 failure to the insurance commissioner in writing.

18 (f) No bail agent shall commingle premiums belonging to
19 insurers and returned premiums belonging to insureds with the
20 bail agent's personal funds or with any other funds except those
21 directly connected with the bail agent's bail business.



1 (g) Any insurer that delivers, in this State, a policy of
2 insurance to a bail agent representing the interest of the
3 insured upon the application or request of such producer shall
4 be deemed to have authorized such producer to receive on the
5 insurer's behalf any premium due upon issuance or delivery of
6 the policy; and the insurer shall be deemed to have so
7 authorized the producer.

8 (h) All collateral shall be preserved and separately
9 retained and the bail agent shall be responsible for the return
10 of all such collateral taken and shall be liable with the surety
11 company for such failure. When a bail bond agent accepts
12 collateral as security, the bail bond agent shall give a written
13 receipt for the collateral to the person on whose bond the bail
14 bond agent is indemnitor or to another on behalf of such
15 principal and the surety, which shall provide in detail a full
16 description of the collateral received. In the event of the
17 failure of or inability for any reason of a bail bond agent or
18 the agent's heirs or assignees to return collateral as required
19 in this subsection, the commissioner or the commissioner's
20 designee is authorized to take immediate possession of the
21 collateral and take whatever actions are necessary and



1 appropriate to ensure compliance with the obligations of this
2 part relating to the return of collateral.

3 **§804-R Administration.** This part shall be administered
4 and enforced by the insurance commissioner."

5 SECTION 4. Chapter 804, Hawaii Revised Statutes, is
6 amended by adding five new sections to be appropriately
7 designated and to read as follows:

8 **§804-AA Right to bail before conviction.** Any person who
9 is in custody and for whom no bail has been set pursuant to the
10 applicable rule of criminal procedure, may advise any judge of a
11 court of record in the county where the person is being held of
12 that fact with a request that bail be set. Upon receiving the
13 request, the judge shall cause the prosecuting attorney to be
14 notified immediately of the arrested person's request, and the
15 district attorney shall have the right to attend and advise the
16 court of matters pertinent to the amount of bail to be set. The
17 judge shall also order the appropriate law enforcement agency
18 having custody of the person to bring the person before the
19 court forthwith, and the judge shall set bail if the offense for
20 which the person was arrested is bailable. It shall not be a
21 prerequisite to bail that any criminal charge has been filed.



1 §804-BB Fixing of bail and conditions of bail bond. (a)

2 There shall be established a filing fee for every bail bond,
3 regardless of method, in the amount of \$25, that shall be
4 collected by the person receiving the bail bond.

5 (b) Every bail bond shall be conditioned that the released
6 person appear to answer the charge against the person at a place
7 and upon a date certain and at any place or upon any date to
8 which the proceeding is transferred or continued.

9 (c) If a defendant has been arrested for a felony offense,
10 the court shall require, as a condition of bail, that the
11 defendant execute or subscribe a written waiver of extradition,
12 stating that the defendant consents to extradition to this State
13 and waives all formal procedures incidental to extradition
14 proceedings in the event that the defendant is arrested in
15 another state while at liberty on such bail bond and
16 acknowledging that the defendant shall not be admitted to bail
17 in any other state pending extradition to this State.

18 (d) Every bail bond shall be conditioned that the released
19 person not commit any felony while at liberty on the bail bond
20 and that the court in which the action is pending shall have the
21 power to revoke the release of the defendant, to increase the
22 bail bond, or to change any bail bond condition if it is shown



1 that a court has found probable cause to believe that the
2 defendant has committed a felony while released pending
3 adjudication of a prior felony charge.

4 (e) In cases of domestic violence, every bail bond shall
5 be conditioned that the released person acknowledges any
6 protection order issued.

7 (f) A bail agent shall be granted the right to make a
8 professional visit to a person in custody, for the purpose of
9 arranging bail.

10 **§804-CC Enforcement procedures and disposition of security**
11 **deposits upon forfeiture or termination of bond.** (a) If a
12 defendant is released upon deposit of cash in any amount or upon
13 deposit of any stocks or bonds and the defendant is later
14 discharged from all liability under the terms of the bond, the
15 clerk of the court shall return the deposit to the person who
16 made the deposit.

17 (b) Where the defendant has been released upon deposit of
18 cash, stocks, bonds, or property or upon a surety bond secured
19 by property, if the defendant fails to appear in accordance with
20 the primary condition of the bond, the court shall declare a
21 forfeiture of the deposit. Notice of the order of forfeiture
22 shall be mailed by the court to the defendant, all sureties, and



1 all depositors or assignees of any deposits of cash or property
2 if the sureties, depositors, or assignees have direct contact
3 with the court, at their last known addresses. The notice shall
4 be sent within ten days after the entry of the order of
5 forfeiture. If the defendant does not appear and surrender to
6 the court having jurisdiction within thirty days from the date
7 of the forfeiture, or within a period that satisfies the court
8 that appearance and surrender by the defendant is impossible,
9 the court may enter judgment for the State against the defendant
10 for the amount of the bail and costs of the court proceedings.
11 Any cash deposits made with the clerk of the court shall be
12 applied to the payment of costs. If any amount of the cash
13 deposit remains after the payment of costs, it shall be applied
14 to payment of the judgment.

15 (c) The court may order that a forfeiture be set aside,
16 upon conditions as the court may impose, if it appears that
17 justice so requires.

18 (d) If, within one year after judgment, the person who
19 executed the forfeited bond as principal or as surety effects
20 the apprehension or surrender of the defendant to a law
21 enforcement officer of the county from which the bond was taken
22 or to the court that granted the bond, the court may vacate the



1 judgment and order a remission less necessary and actual costs
2 of the court.

3 (e) By entering into a bond, each obligor, whether the
4 obligor is the principal or a surety, submits to the
5 jurisdiction of the court. The liability of the obligor under
6 the bond may be enforced, without the necessity of an
7 independent action, as follows: The court shall order the
8 issuance of a citation directed to the obligor to show cause why
9 judgment should not be entered against the obligor forthwith and
10 execution issue thereon. The citation may be served personally
11 or by certified mail upon the obligor directed to the address
12 given in the bond. Hearing on the citation shall be held not
13 less than twenty days after service. The defendant's attorney
14 and the prosecuting attorney shall be given notice of the
15 hearing. At the conclusion of the hearing, the court may enter
16 a judgment for the State and against the obligor, and execution
17 shall issue thereon as on other judgments. The prosecuting
18 attorney shall have execution issued forthwith upon the judgment
19 and deliver it to the sheriff to be executed by levy upon the
20 stocks, bond, or real estate, which has been accepted as
21 security for the bond.



1 (f) This section shall not apply to appearance bonds
2 written by compensated sureties, which shall be subject to the
3 provisions of section 804-EE.

4 **§804-DD Exoneration from bond liability.** (a) Any person
5 executing a bail bond as principal or as surety shall be
6 exonerated as follows:

7 (1) When the condition of the bond has been satisfied;

8 (2) When the amount of the forfeiture has been paid;

9 (3) When the surety appears and provides satisfactory

10 evidence to the court that the defendant is unable to

11 appear before the court due to the defendant's death

12 or the detention or incarceration of the defendant in

13 a foreign jurisdiction, if the defendant is

14 incarcerated for a period in excess of ninety days and

15 the State has refused to extradite the defendant;

16 except that if the State extradites the defendant, all

17 costs associated with the extradition shall be borne

18 by the surety up to the amount of the bond. For the

19 purposes of this paragraph, "costs associated with

20 extradition" shall be calculated as and limited to the

21 round-trip mileage between the Hawaii court of

22 jurisdiction and the location of the defendant's



1 incarceration at the rate allowed for reimbursement,
2 up to the amount of the bond; or

3 (4) Upon surrender of the defendant into custody at any
4 time before a judgment has been entered against the
5 sureties for forfeiture of the bond, upon payment of
6 all costs occasioned thereby. A surety may seize and
7 surrender the defendant to the sheriff of the county
8 wherein the bond is taken, and it is the duty of the
9 sheriff, on such surrender and delivery of a certified
10 copy of the bond by which the surety is bound, to take
11 the person into custody and, by writing, acknowledge
12 the surrender.

13 (b) Upon entry of an order for deferred prosecution or
14 deferred judgment, sureties upon any bond given for the
15 appearance of the defendant shall be released from liability on
16 the bond.

17 (c) A trial court has no jurisdiction to relieve the
18 surety from liability on a bail bond except on grounds generally
19 recognized by the law as excusing the performance of the
20 undertaking, and such grounds exist only when:

21 (1) The appearance of accused is made impossible by an act
22 of God;



1 (2) An act of the state that is the beneficiary of the
2 bond; or

3 (3) An act of law.

4 The case where the principal in a bail bond dies before the day
5 of performance or is prevented by illness from appearing falls
6 within paragraph (1). The case where the principal in a bail
7 bond is in prison within the State, pursuant to a judgment of a
8 court of competent jurisdiction of the State falls within
9 paragraph (2). The case where the party has been turned over to
10 the federal court within the State and is serving a sentence by
11 that court, or if the party has been arrested in the State and
12 is sent out of the State by the governor upon requisition from
13 another state or foreign jurisdiction, falls within paragraph
14 (3).

15 (d) Where the defendant in a criminal case is imprisoned
16 in another state at the time the case is called for trial and
17 cannot appear pursuant to the conditions of the defendant's
18 bond, and the surety thereon offers to defray the costs and
19 expenses involved in returning the defendant to Hawaii upon
20 completion of the imprisonment that prevented the defendant's
21 attendance in the trial court, the surety is relieved from a
22 forfeiture.



1 (e) A defendant who is transferred from the State's
2 custody to a federal agency pursuant to a detainer has never
3 been released into the legal custody of the surety who is
4 consequently discharged from any liability on the bond.

5 (f) Broad discretion is vested in the court to consider
6 all the facts and circumstances of each case in their totality
7 to achieve a just result and satisfy the best interests of the
8 public.

9 **§804-EE Enforcement procedures for compensated sureties.**

10 (a) Each court of record in this State shall implement a board
11 system for the recording and dissemination of the names of those
12 compensated sureties who are prohibited from posting bail bonds
13 in the State due to an unpaid judgment as set forth in this
14 section.

15 (b) By entering into a bond, each obligor, including the
16 bond principal and compensated surety, submits to the
17 jurisdiction of the court and acknowledges the applicability of
18 the forfeiture procedures set forth in this section.

19 (c) Liability of bond obligors on bonds issued by
20 compensated sureties may be enforced, without the necessity of
21 an independent action, as follows:



- 1 (1) In the event a defendant does not appear before the
2 court and is in violation of the primary condition of
3 an appearance bond, the court may declare the bond
4 forfeited.
- 5 (2) If a bond is declared forfeited by the court, notice
6 of the bail forfeiture order shall be served on the
7 bail agent by certified mail and on the bail insurance
8 company by regular mail within ten days after the
9 entry of the forfeiture. Service of notice of the
10 bail forfeiture on the defendant is not required. The
11 notice shall include, but need not be limited to:
- 12 (A) A statement intended to inform the compensated
13 surety of the entry of forfeiture;
- 14 (B) An advisement that the compensated surety has the
15 right to request a show cause hearing fifteen
16 days after receipt of notice of forfeiture, by
17 procedures set by the court; and
- 18 (C) An advisement that, if the compensated surety
19 does not request a show cause hearing, judgment
20 shall be entered upon expiration of thirty days
21 following the entry of forfeiture.



- 1 (3) A compensated surety, upon whom notice of a bail
2 forfeiture order has been served, shall have fifteen
3 days after receipt of notice of the forfeiture to
4 request a hearing to show cause why judgment on the
5 forfeiture should not be entered for the State against
6 the compensated surety. The request shall be granted
7 by the court and a hearing shall be set within thirty
8 days after entry of forfeiture or at the court's
9 earliest convenience. At the conclusion of the
10 hearing if requested by the compensated surety, the
11 court may enter judgment for the State against the
12 compensated surety, or the court may in its discretion
13 order further hearings. Upon expiration of thirty
14 days after the entry of forfeiture, the court shall
15 enter judgment for the State against the compensated
16 surety if the compensated surety did not request a
17 hearing to show cause.
- 18 (4) If a show cause hearing was timely set, but the
19 hearing did not occur within thirty days after the
20 entry of forfeiture, any entry of judgment at the
21 conclusion of the hearing against the compensated
22 surety shall not be vacated on the grounds that the



1 matter was not timely heard. If judgment is entered
2 against a compensated surety upon the conclusion of a
3 requested show cause hearing, and the hearing did not
4 occur within thirty days after the entry of
5 forfeiture, execution upon the judgment shall be
6 automatically stayed for no more than one hundred
7 twenty days after entry of forfeiture.

8 (5) If at any time prior to the entry of judgment, the
9 defendant appears in court, either voluntarily or in
10 custody after surrender or arrest, the court, on its
11 own motion, shall direct that the bail forfeiture be
12 set aside and the bond exonerated at the time the
13 defendant first appears in court; except that if the
14 State extradites the defendant, all necessary and
15 actual costs associated with the extradition shall be
16 borne by the surety up to the amount of the bond.

17 (6) If, at a time prior to the entry of judgment, the
18 surety provides proof to the court that the defendant
19 is in custody in any other jurisdiction within the
20 State, the court, on its own motion, shall direct that
21 the bail forfeiture be set aside and the bond
22 exonerated; except that if the court extradites the



1 defendant, all necessary and actual costs associated
2 with the extradition shall be borne by the surety up
3 to the amount of the bond. If the court elects to
4 extradite the defendant, any forfeiture will be stayed
5 until such time the defendant appears in the court
6 where the bond returns.

7 (7) A compensated surety shall be exonerated from
8 liability upon the bond by satisfaction of the bail
9 forfeiture judgment, surrender of the defendant, or
10 order of the court. If the surety provides proof to
11 the court that the defendant is in custody in any
12 other jurisdiction within the State, within ninety
13 days after the entry of judgment, the court, on its
14 own motion, shall direct that the bail forfeiture
15 judgment be vacated and the bond exonerated; except
16 that if the court extradites the defendant, all
17 necessary and actual costs associated with the
18 extradition shall be borne by the surety up to the
19 amount of the bond. If the court elects to extradite
20 the defendant, any judgment will be stayed until the
21 time the defendant appears in the court where the bond
22 returns.



1 (8) Execution upon the bail forfeiture judgment shall be
2 automatically stayed for ninety days from the date of
3 entry of judgment; except that if judgment is entered
4 against a compensated surety upon the conclusion of a
5 requested show cause hearing, and such hearing did not
6 occur within thirty days after the entry of
7 forfeiture, the judgment shall be automatically
8 stayed.

9 (9) Upon the expiration of the stay of execution described
10 in paragraph (8), the bail forfeiture judgment shall
11 be paid forthwith by the compensated surety, if not
12 previously paid, unless the defendant appears in
13 court, either voluntarily or in custody after
14 surrender or arrest, or the court enters an order
15 granting an additional stay of execution or otherwise
16 vacates the judgment.

17 (10) If a bail forfeiture judgment is not paid on or before
18 the expiration date of the stay of execution, the name
19 of the bail bond agent shall be placed on the board of
20 the court that entered the judgment. The bail bond
21 agent shall be prohibited from executing any further
22 bail bonds in this State until the judgment giving



1 rise to placement on the board is satisfied, vacated,
2 or otherwise discharged by order of the court.

3 (11) If a bail forfeiture judgment remains unpaid for
4 thirty days after the name of the bail bond agent is
5 placed on the board, the court shall send notice by
6 certified mail to the bail insurance company for whom
7 the bail bond agent has executed the bond that, if the
8 judgment is not paid within fifteen days after the
9 date of mailing of the notice, the name of the bail
10 insurance company shall be placed on the board and the
11 company shall be prohibited from executing any further
12 bail bonds in this State until the judgment giving
13 rise to placement on the board is satisfied, vacated,
14 or otherwise discharged by order of the court.

15 (12) A compensated surety shall be removed forthwith from
16 the board only after every judgment for which the
17 compensated surety was placed on the board is
18 satisfied, vacated, or discharged or stayed by entry
19 of an additional stay of execution. No compensated
20 surety shall be placed on the board in the absence of
21 the notice required by this section.



- 1 (13) The court may order that a bail forfeiture judgment be
2 vacated and set aside or that execution thereon be
3 stayed upon conditions as the court may impose, if it
4 appears that justice so requires, as provided in
5 section 804-DD(f); provided that trial court has no
6 jurisdiction to relieve the surety from liability on a
7 bail bond except as provided in section 804-DD(c).
- 8 (14) A compensated surety shall be exonerated from
9 liability upon the bond by satisfaction of the bail
10 forfeiture judgment, surrender of the defendant, or by
11 order of the court. If the defendant appears in
12 court, either voluntarily or in custody after
13 surrender or arrest, within ninety days after the
14 entry of judgment, the court, at the time the
15 defendant first appears in court, on its own motion,
16 shall direct that the bail forfeiture judgment be
17 vacated and the bond exonerated; except that if the
18 State extradites such defendant, all necessary and
19 actual costs associated with such extradition shall be
20 borne by the surety up to the amount of the bond.
- 21 (15) If, within one year after payment of the bail
22 forfeiture judgment, the compensated surety effects



1 the apprehension or surrender of the defendant and
2 provides reasonable notice to the court to which the
3 bond returns that the defendant is available for
4 extradition, the court shall vacate the judgment and
5 order a remission of the amount paid on the bond, less
6 any necessary and actual costs incurred by the State
7 and the sheriff who has actually extradited the
8 defendant.

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

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



1 that a forfeiture be set aside and judgment vacated as
2 set forth in this section.

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

18 SECTION 5. In codifying the new sections added by sections
19 2, 3, and 4 of this Act, the revisor of statutes shall
20 substitute appropriate section numbers for the letters used in
21 designating the new sections in this Act.



Report Title:

Bail; Apprehension of Fugitives; Bail Bond Agents

Description:

Establishes qualifications and requirements for persons who apprehend bail fugitives. Establishes requirements for bail bond agents. Establishes conditions for release on bail and forfeiture of bonds.

