



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Thursday, February 23, 2012, 6:00 p.m.
State Capitol, Conference Room 308

by
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Acting Deputy Chief Court Administrator
District Court of the First Circuit

Bill No. and Title: House Bill No. 2868, 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 January 7, 2059.

Judiciary's Position:

Although the Judiciary appreciates the intent of House Bill No. 2868 H.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 House Bill No. 2868 H.D. 1 in its current form. This bill proposes to add a new section to Sec. 804 HRS and portions of the appear to be in conflict with the provisions of bond forfeiture procedures as set forth in Sec. 804-51 and the license denial, nonrenewal, 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) provides 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."



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House Bill No. 2868, H.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.

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.

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 15 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 severe operational challenges.

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

I. Proposed Forfeiture Process

Section 2 - judgment shall be entered upon expiration of **thirty (30) days** following the entry of forfeiture.



Section 4 - judgment automatically stayed for no more than **one hundred twenty (120) days** after entry of forfeiture.

Section 8 - Execution of bail forfeiture judgment automatically stayed **ninety (90) days** from date of judgment.

Section 15 - 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 11 - 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 18 - 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**.

The Judiciary acknowledges that methods for improving compliance for payment of forfeited bonds are important, however, under the provisions of House Bill No. 2868 H.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.

DA KINE BAIL BONDS

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

COMMITTEE ON FINANCE

Representative Marcus R. Oshiro, Chair

2/23/12, 1:00 PM, Rm. 308,

HB 2868, Relating to Bail

Chair Oshiro and Members of the Finance Committee,

My name is Mona Wood-Sword, here on behalf of my clients, Duane and Beth Chapman, of Da Kine Bail Bonds, who are currently attending a conference on the mainland. We are testifying in favor of HB 2868.

This bill will force bail agents to be financially responsible in keeping current with the Judiciary on forfeited bail.

Currently, there is over \$9 million owed to the State in forfeited bail, but bail agents who owe this money continue to write bail because there are no consequences.

HB 2868 will create a level playing field for all bail agents, and bring transparency to the bail bonds industry.

We urge your support for this bill.

Mahalo nui!