

JAN 21 2026

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 providers,
2 including bail agents, sureties, and insurers, provide a
3 valuable service to the public, law enforcement, and the
4 accused. The legislature further finds that the State's bail
5 forfeiture rules create unnecessary risks for bail providers,
6 decreasing the incentive to furnish bail under certain
7 circumstances due to the high financial risk of forfeiture. Due
8 to this significant financial risk, bail providers typically
9 require a payment of ten per cent of the total bail amount.
10 This system disadvantages low-income defendants charged with
11 serious crimes because they are often unable to afford the
12 collateral payment and therefore ineligible for pretrial
13 release.

14 The legislature recognizes the vital role bail plays in the
15 judicial system. The presumption of innocence is a core
16 component of the country's criminal justice system. Following
17 this presumption, and barring certain exceptions, it is



1 therefore unjust to hold defendants in jail until trial,
2 pursuant to the bail clause of the eighth amendment of the
3 United States Constitution. Monetary bail enables defendants to
4 secure their release until trial by depositing a dollar sum with
5 the court that is subject to forfeiture if the defendant fails
6 to appear in court as ordered. Bail therefore safeguards both
7 the rights of the accused and public safety.

8 Defendants with sufficient financial means may pay their
9 own bail. Those who can pay at least ten per cent of the total
10 sum may collateralize the remainder by pledging assets to a bail
11 agent. Bail agents collaborate with sureties and insurers,
12 collectively known as bail providers, to finance the total bail
13 amount for deposit with the court. All parties involved risk
14 forfeiting their contributions to the deposit should the
15 defendant fail to appear in court.

16 In addition to their role as financiers, bail agents also
17 operate as quasi-law enforcement officers due to their financial
18 stake in the proceedings. Bail agents have the legal authority,
19 expertise, duty, and incentive to monitor defendants and
20 apprehend fugitives. They provide this service at no cost to
21 taxpayers. Without bail agents performing this essential



1 function, local police would be obligated to divert additional
2 resources from ongoing crimefighting efforts.

3 The legislature further finds that, in the State, bail may
4 be forfeited within thirty days of a defendant's failure to
5 appear in court. This is an unrealistic deadline for bail
6 agents to locate and apprehend fugitives. Although the court
7 may extend the deadline for good cause, failure is not an option
8 for bail providers. Regardless of their efforts and
9 circumstances, bail providers forfeit the full monetary bail
10 amount if they fail to apprehend the fugitive before the
11 deadline. The full forfeiture may even apply if a bail agent
12 apprehends and delivers the defendant in time for trial but
13 misses the forfeiture deadline.

14 These strict deadlines and corresponding forfeiture rules
15 significantly increase the financial risk of providing bail.
16 Accordingly, bail providers require assets as collateral to
17 insulate themselves from potential losses. Without collateral,
18 which is typically ten per cent of the total bail amount, the
19 existing forfeiture system would quickly bankrupt many bail
20 providers.



1 Due to this collateral requirement, defendants with limited
2 financial means are often unable to obtain bail and pretrial
3 release. Many defendants must ask family and friends to act as
4 guarantors by paying the ten per cent deposit to the bail agent
5 and pledging their assets to secure the remainder. If the
6 defendant is of low moral character and subsequently flees,
7 their guarantors, although completely innocent of wrongdoing,
8 may lose their life savings and homes to forfeiture.

9 The legislature therefore finds that the existing bail
10 system is flawed due to the perverse incentives it creates.
11 These include ending a bail agent's financial incentive to
12 locate and apprehend defendants that flee by ordering bail
13 forfeiture; relying on the threat of forfeiture of their
14 guarantor's assets to deter bad-faith, destitute defendants from
15 fleeing; and predicating pretrial release on financial means,
16 forcing many defendants acting in good-faith but lacking
17 monetary assets to remain in jail until trial.

18 Despite these flaws, the legislature acknowledges that bail
19 reform is complex and must be achieved incrementally to
20 safeguard public safety. The consequences of reforms such as
21 eliminating monetary bail or transitioning to a government-run



1 bail system are historically mixed. Oregon outlawed commercial
2 bail bonds in 1973. However, since transitioning to a public-
3 sector pretrial program, defendants' failure-to-appear rates in
4 the state have risen dramatically.

5 Several studies demonstrate the advantages of maintaining a
6 commercial bail industry. A 2005 study examining pretrial
7 releases in California found that defendants released on their
8 own recognizance or through a conditional release program were
9 sixty per cent more likely to fail to appear in court than those
10 released on surety bond. The study also highlighted the public
11 service bail agents provide by apprehending fugitives. It found
12 that defendants who failed to appear for court were two and a
13 half times more likely to remain fugitives if they were released
14 on their own recognizance or conditional or supervised release
15 than if they were released on surety bond. The study estimated
16 that with a larger rate of surety bond releases, the total cost
17 savings of the counties examined could range between \$14,000,000
18 and \$109,000,000 annually (Michael K. Block, University of
19 Arizona, *The Effectiveness and Cost of Secured and Unsecured*
20 *Pretrial Release in California's Large Urban Counties: 1990-2000*
21 (2005)). These results demonstrate the fiscal, legal, and



1 social advantages of utilizing bail agents. Due to their
2 financial incentives and private powers, bail agents have a
3 better history of maintaining the bail system than their public
4 sector counterparts. The legislature therefore finds that the
5 existing bail system must be reformed to sustain these
6 advantages while expanding services accessible to defendants
7 with limited financial means.

8 Accordingly, the purpose of this Act is to:

9 (1) Predicate forfeiture rules on whether bail providers
10 performed and continue to perform their duties with
11 reasonable diligence;

12 (2) Clarify when bail providers may discharge their
13 duties;

14 (3) Specify the factors courts shall consider to determine
15 if bail providers are performing their duties with
16 reasonable diligence or are negligent and should be
17 subject to forfeiture;

18 (4) Require courts to hold a hearing to order a
19 forfeiture, rather than entering a default judgement
20 in favor of the State;



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(5) Increase the deadline to file a motion to set aside forfeiture;

(6) Clarify that courts have discretion to further delay the forfeiture deadline; and

(7) Specify that bail providers are not in privity with defendants, and therefore not barred res judicata from filing a motion to set aside forfeiture if the defendant already made the same motion and was denied.

This Act shall be known and cited as the "Hawaii Fair Bail Act".

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

"§804- Judicial discretion; bail proceedings. The court shall have maximum discretion to grant, deny, and set conditions of bail pursuant to article I, section 12, of the Hawaii State Constitution, including the form and amount pursuant to section 804-9. The court may consider any evidence to make its determination during bail proceedings."

SECTION 3. Section 804-1, Hawaii Revised Statutes, is amended to read as follows:



1 "§804-1 Bail [~~defined~~]; definitions. As used in this
2 chapter:

3 "Any time" includes nights, weekends, holidays, and the
4 time after bail forfeiture, without restriction to court hours
5 or administrative convenience.

6 [~~Bail,~~] "Bail" or [~~the~~] "the giving of [~~bail, is~~] bail"
7 means the signing of the recognizance by the defendant and the
8 defendant's surety or sureties, conditioned for the appearance
9 of the defendant at the session of a court of competent
10 jurisdiction to be named in the condition, and to abide by the
11 judgment of the court.

12 "Bail agent" has the same meaning as defined in section
13 431:9N-101 and includes a producer or agent legally authorized
14 to act on behalf of a surety and the court to locate and
15 apprehend a defendant who flees or otherwise fails to appear in
16 court as ordered.

17 "Bail bond" means a written financial guarantee provided to
18 the court by a bail agent, defendant, or other party that can be
19 forfeited if the defendant fails to appear in court as ordered
20 without justifiable cause.



1 "Bail provider" includes any bail agent, surety, or insurer
2 that assists in financing a defendant's bail and assumes certain
3 responsibilities pursuant to this chapter.

4 "Defendant" or "principal" means any person who is a
5 defendant in a criminal proceeding, or quasi-criminal
6 proceeding, for whom a bail or peace bond is being considered,
7 granted, revoked, or forfeit.

8 "Insurer" means a party, often a business entity, that
9 assumes the risk of default for the benefit of a bail agent.

10 "Peace bond" means a surety bond required by a court to
11 guarantee that a defendant will not violate a court order to
12 refrain from engaging in specified conduct, violating the law,
13 or breaching the peace.

14 "Surety" means a person or entity that assumes direct
15 liability for a principal's bond obligation. "Surety" includes
16 a business entity that provides a line of credit to a bail agent
17 to deposit with the court as bail for a defendant that may be
18 forfeited if the defendant fails to appear as ordered, in return
19 for payment of a risk premium."

20 SECTION 4. Section 804-3, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



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"(b) Any person charged with a criminal offense shall be
bailable by sufficient sureties; provided that bail may be
denied where the charge is for a serious crime, and:

(1) There is a serious risk that the person will flee;

(2) There is a serious risk that the person will obstruct
or attempt to obstruct justice, or therefore, injure,
or intimidate, or attempt to thereafter, injure, or
intimidate, a prospective witness or juror;

(3) There is a serious risk that the person poses a danger
to any person or the community; [~~or~~]

(4) There is a serious risk that the person will engage in
illegal activity[~~-~~];

(5) There is a serious risk that the person will infringe
on or obstruct the legal rights of other persons;

(6) There is a serious risk that the person poses a danger
to property;

(7) The person breached the conditions of bail in past
criminal proceedings or has already breached the
conditions of bail in the current proceedings; or

(8) Bail is prohibited by law for the alleged offense."



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SECTION 5. Section 804-10.5, Hawaii Revised Statutes, is amended to read as follows:

"§804-10.5 ~~[Sureties; qualification.]~~ Bail providers; qualifications; duties. (a) In determining the sufficiency of a ~~[surety or sureties,]~~ bail provider, the court shall consider the ~~[surety's or sureties']~~ historic conduct of the bail provider, including the bail provider's:

- (1) Character;
- (2) Reliability;
- (3) Place of residence; and
- (4) Financial and employment circumstances.

(b) No person or entity shall be a sufficient ~~[surety]~~ bail provider who:

- (1) Has been convicted of perjury for submitting a false statement under section 804-11.5;
- (2) Does not satisfy the requirements of section 804-11.5;
- or
- (3) Does not satisfy the requirements of article 9A, chapter 431, if posting an insurance bond as defined in section 431:1-210(1).

(c) The duties of a bail provider shall include:



- 1 (1) Ensuring that the defendant, or any other person
2 pledging assets as collateral for bail on behalf of
3 the defendant, is duly informed of the terms, fees,
4 costs, and possible adverse consequences of the
5 transaction;
- 6 (2) Posting bail timely, in the amount and in accordance
7 with any order or instructions issued by the court;
- 8 (3) Taking reasonable measures to:
- 9 (A) Monitor the whereabouts of the defendant
10 throughout the trial or until discharged by the
11 court; and
- 12 (B) Remind the defendant of any relevant hearing
13 times and dates, including the times and dates of
14 trial;
- 15 (5) Taking appropriate measures to assist the defendant as
16 needed to appear in court as ordered for hearings and
17 trial; and
- 18 (6) Diligently searching for, apprehending, and
19 surrendering the defendant as directed by the court if
20 the defendant fails to appear as ordered for a hearing



1 or trial, flees, or otherwise violates the terms of
2 bail.

3 The duties of bail providers cooperating to secure a person's
4 bail may overlap or be independent at each bail provider's
5 discretion; provided that the bail providers are collectively
6 responsible for ensuring all duties are performed."

7 SECTION 6. Section 804-14, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**S804-14 Discharge of ~~[sureties-]~~ bail providers who**
10 provide bail bonds for pretrial release. [~~These who may have~~
11 ~~become bail for anyone,~~] Any bail provider may at any time
12 discharge [~~themselves,~~] oneself by surrendering [~~him~~] the
13 defendant to the custody of any sheriff [~~or~~], chief of police
14 [~~or his~~], the sheriff's or chief's authorized subordinate[-], or
15 any appropriate federal law enforcement agency, by filing a
16 notice or motion with the court as follows:

17 (1) If the defendant has not breached the terms of bail or
18 pretrial release, the bail provider may seek discharge
19 for other reasons; provided that the bail provider
20 shall return all fees and expenses charged to the



1 defendant and others and assist the defendant as
2 needed to procure alternate sources of bail;

3 (2) If the defendant has breached any condition of bail or
4 pretrial release other than failure to appear, the
5 bail provider, after discovering the breach:

6 (A) Shall notify the court of the breach; and

7 (B) May surrender the defendant to law enforcement
8 and move that the court grant the bail provider
9 discharge; provided that the bail provider shall
10 surrender the defendant if so ordered by the
11 court; provided further that, if the motion for
12 discharge is granted, the court shall have the
13 discretion to hold the defendant in custody
14 pending trial or allow the defendant to seek a
15 new source of bail;

16 (3) If the defendant fails to appear for any hearing or
17 trial as ordered by the court, after the defendant is
18 apprehended and surrendered to the custody of law
19 enforcement, the bail provider may seek discharge; and

20 (4) If, due to a breach by the defendant, the court
21 increases the bail amount, the court shall afford the



1 bail provider the option to decline the additional
2 financial risk and grant the bail provider a discharge
3 upon request, whereupon the court shall enable the
4 defendant to seek a new source of bail."

5 SECTION 7. Section 804-41, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**\$804-41 Discharge of [surety] bail providers who provide**
8 **peace bonds.** At any time before the breach of the condition of
9 the peace bond, the [surety] bail provider may discharge oneself
10 by surrendering the principal into the hands of any sheriff
11 [~~or~~], the chief of police [~~or~~], the sheriff's or chief's
12 authorized subordinate[~~er~~], or any appropriate federal law
13 enforcement agency, by filing a notice or motion with the court
14 as follows:

15 (1) If the defendant has not breached the terms of the
16 peace bond, the bail provider may seek to discharge
17 oneself for other reasons; provided that the bail
18 provider shall return all fees and expenses charged to
19 the defendant and others and assist the defendant as
20 needed to procure alternate sources of peace bond;



1 (2) If the defendant has breached any condition of the
2 peace bond, the bail provider, after discovering the
3 breach:

4 (A) Shall notify the court of the breach; and

5 (B) May surrender the defendant to law enforcement
6 and move that the court grant the bail provider
7 discharge; provided that the bail provider shall
8 surrender the defendant if so ordered by the
9 court; provided further that, if the motion for
10 discharge is granted, the court shall have the
11 discretion to hold the defendant in custody
12 pending trial or allow the defendant to seek a
13 new source of peace bond; and

14 (3) If, due to a breach by the defendant, the court
15 increases the peace bond amount, the court shall
16 afford the bail provider the option to decline the
17 additional financial risk and grant the bail provider
18 discharge upon request, whereupon the court may enable
19 the defendant to seek a new source of peace bond."

20 SECTION 8. Section 804-51, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§804-51 ~~[Procedure.]~~ Forfeiture; procedures;
2 requirements. (a) Whenever the court, in any criminal cause,
3 ~~[forfeits]~~ due to the flight of the defendant or breach of other
4 bond terms, contemplates the forfeiture of any bond or
5 recognizance given [in a criminal cause], either sua sponte or
6 upon a motion from the prosecutor, the court shall [immediately
7 ~~enter up]~~ schedule a hearing to determine whether judgment
8 should be rendered in favor of the State and against the
9 principal or principals, bail agent, surety or sureties, and
10 surety insurer or surety insurers on the bond, jointly and
11 severally, for the full amount of the bond and penalty, if any,
12 thereof[, and]. Notice of the hearing shall be served at least
13 thirty days before the hearing via the judicial electronic
14 filing and service system to all parties registered with the
15 system or via personal service or certified mail, return receipt
16 requested, to all parties not registered with the judicial
17 electronic filing and service system.

18 (b) If the bond was provided by a bail agent, regardless
19 of whether in concert with a surety or insurer, the bond shall
20 only be forfeited if:



1 (1) The bail agent, surety, or insurer failed to perform
2 their duties with reasonable diligence or are failing
3 to continue to perform those duties with reasonable
4 diligence. To determine whether a bail provider's
5 duties were and continue to be performed with
6 reasonable diligence, the court:

7 (A) Shall consider whether the bail provider acted
8 appropriately given the factual circumstances,
9 instead of whether the bail provider succeeded or
10 failed in apprehending the defendant;

11 (B) May consider any evidence, including hearsay;

12 (C) Shall base adjudication on the preponderance of
13 evidence standard; and

14 (D) May require the bail provider to provide the
15 court with additional evidence at regular
16 intervals after the hearing to demonstrate
17 continued good-faith efforts to perform their
18 duties with diligence;

19 (2) The bail provider violated any law relevant to their
20 duties; or

21 (3) The bail provider disobeyed an order from the court.



1 (c) The bail provider shall not be construed as being in
2 privity with a defendant who breaches any requirement of bond,
3 and shall therefore not be barred res judicata or otherwise
4 precluded from moving the court to set aside a forfeiture or
5 moving for a discharge of their obligations, regardless of
6 whether the defendant or defendant's counsel previously made the
7 same motions and regardless of whether those motions were
8 denied.

9 (d) If the court orders a forfeiture following a hearing
10 pursuant to subsections (a) and (b), the court shall cause
11 execution to issue thereon [~~immediately~~] after the expiration of
12 [~~thirty~~] ninety days from the date that notice is given via the
13 judicial electronic filing and service system to registered
14 parties, or, to parties not registered with the system, via
15 personal service or certified mail, return receipt requested, to
16 the bail agent, surety or sureties, or the surety insurer or
17 surety insurers on the bond, of the entry of the judgment in
18 favor of the State, unless before the expiration of [~~thirty~~]
19 ninety days from the date that notice is given to the bail
20 agent, surety or sureties, or the surety insurer or surety
21 insurers on the bond of the entry of the judgment in favor of



1 the State, a motion or application of the principal or
2 principals, bail agent, surety or sureties, surety insurer or
3 surety insurers, or any of them, showing good cause why
4 execution should not issue upon the judgment, is filed with the
5 court[-]; provided that the court may extend, waive, or modify
6 the ninety-day period for filing a motion to set aside
7 forfeiture pursuant to subsection (e). If the motion or
8 application, after a hearing held thereon, is sustained, the
9 court shall vacate the judgment of forfeiture and, if the
10 principal surrenders or is surrendered pursuant to section 804-
11 14 or section 804-41, return the bond or recognizance to the
12 principal, bail agent, surety, or surety insurer, whoever shall
13 have given it, less the amount of any cost, as established at
14 the hearing, incurred by the State as a result of the
15 nonappearance of the principal or other event on the basis of
16 which the court forfeited the bond or recognizance. If the
17 motion or application, after a hearing held thereon, is
18 overruled, execution shall forthwith issue and shall not be
19 stayed unless the order overruling the motion or application is
20 appealed from as in the case of a final judgment. If the motion
21 or application, after a hearing held thereon, is granted, the



1 State may appeal the order granting the motion or application as
2 in the case of a final judgment.

3 (e) The court shall have the discretion to extend, waive,
4 or modify all procedural deadlines in forfeiture proceedings.

5 (f) If the defendant fled and has not been located and
6 apprehended, no forfeiture shall be ordered unless a National
7 Crime Information Center warrant is entered at least thirty days
8 before forfeiture.

9 (g) This section shall be considered to be set forth in
10 full in words and figures in, and to form a part of, and to be
11 included in, each and every bond or recognizance given in a
12 criminal cause, whether actually set forth in the bond or
13 recognizance, or not."

14 SECTION 9. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 10. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



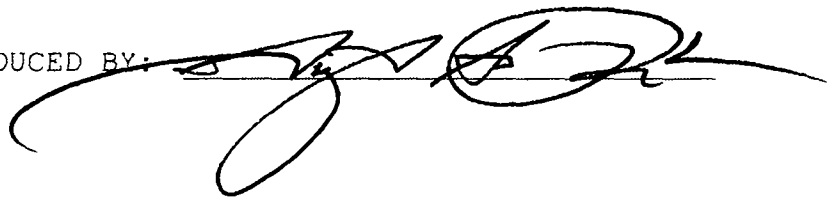
1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 11. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 12. This Act shall take effect upon its approval.

6

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line.

S.B. NO. 2279

Report Title:

Bail Bonds; Peace Bonds; Bail Agents; Sureties; Insurers; Bail Forfeiture; Defendants; Limited Financial Means

Description:

Amends bail and peace bond forfeiture rules to predicate forfeiture on whether bail providers performed and continue to perform their duties with reasonable diligence. Clarifies when bail providers may discharge their duties. Specifies the factors that courts shall consider in determining if bail providers are performing their duties with reasonable diligence or are negligent and should be subject to forfeiture. Requires courts to hold a hearing to order a forfeiture. Extends the deadline to file motions to set aside forfeitures. Clarifies that courts may extend, waive, or modify any procedural deadlines in forfeiture proceedings. Specifies that bail providers are not in privity with defendants, and therefore not barred res judicata from filing certain motions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

