

By the Committee on Banking and Insurance; and Senator Clary

311-1931-99

1 A bill to be entitled
2 An act relating to bail bonds; amending s.
3 648.386, F.S.; revising certain continuing
4 education requirements; amending s. 648.44,
5 F.S.; revising requirements relating to bail
6 bond agents; amending s. 903.21, F.S.;
7 providing a definition; amending s. 903.035,
8 F.S.; specifying that information provided by
9 any person relating to application for bail
10 must be accurate, truthful, and complete;
11 amending s. 903.26, F.S.; requiring discharge
12 of a forfeiture with a time certain; providing
13 an additional criterion for discharge of a
14 forfeiture; requiring a clerk of court to set
15 aside a forfeiture and discharge a bond under
16 certain circumstances; amending s. 903.27,
17 F.S.; providing for tolling certain forfeiture
18 operations under certain circumstances;
19 amending s. 903.28, F.S.; requiring remissions
20 to be granted under certain circumstances;
21 amending s. 903.31, F.S.; providing for
22 expiration of certain bonds under certain
23 circumstances; specifying nonapplication when a
24 bond is declared forfeited; prohibiting
25 reinstatement of original appearance bonds
26 under certain circumstances; providing an
27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (c) of subsection (2) and
2 paragraph (a) of subsection (4) of section 648.386, Florida
3 Statutes, are amended to read:

4 648.386 Qualifications for prelicensing and continuing
5 education schools and instructors.--

6 (2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION
7 SCHOOLS.--In order to be considered for approval and
8 certification as an approved limited surety agent and
9 professional bail bond agent continuing education school, such
10 entity must:

11 (c) Offer continuing education classes which are
12 comprised of a minimum of 2 hours of approved coursework and
13 are taught by an approved supervising instructor or guest
14 lecturer approved by the entity or the supervising instructor.

15 (4) INSTRUCTOR'S DUTIES AND QUALIFICATIONS.--

16 (a) Each course must have a supervising instructor who
17 is approved by the department. The supervising instructor
18 shall be present at all classes. The supervising instructor
19 is responsible for:

- 20 1. All course instructors.
- 21 2. All guest lecturers.
- 22 3. The course outlines and curriculum.
- 23 4. Certification of each attending limited surety
24 agent or professional bail bond agent.
- 25 5. Completion of all required forms.
- 26 6. Assuring that the course is approved.

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28 Either the entity or the supervising instructor may approve
29 guest lecturers.

30 Section 2. Paragraph (1) of subsection (1) of section
31 648.44, Florida Statutes, is amended to read:

1 648.44 Prohibitions; penalty.--

2 (1) A bail bond agent, temporary bail bond agent, or
3 runner may not:

4 (1) Execute a bond in this state if a judgment has
5 been entered on a bond executed by the bail bond agent, which
6 has remained unpaid for 35 ~~60~~ days, unless the full amount of
7 the judgment is deposited with the clerk in accordance with s.
8 903.27(5).

9 Section 3. Paragraph (a) of subsection (1) of section
10 903.035, Florida Statutes, is amended to read:

11 903.035 Applications for bail; information provided;
12 hearing on application for modification; penalty for providing
13 false or misleading information or omitting material
14 information.--

15 (1)(a) All information provided by a defendant or any
16 other person, in connection with any application for or
17 attempt to secure bail, to any court, court personnel, or
18 individual soliciting or recording such information for the
19 purpose of evaluating eligibility for, or securing, bail for
20 the defendant, under circumstances such that the defendant or
21 such other person knew or should have known that the
22 information was to be used in connection with an application
23 for bail, shall be accurate, truthful, and complete without
24 omissions to the best knowledge of the defendant or such other
25 person. Inaccuracies or omissions by county, correctional, or
26 court employees shall not be grounds for discharging a
27 forfeiture or setting aside a judgment.

28 Section 4. Subsection (3) of section 903.21, Florida
29 Statutes, is amended to read:

30 903.21 Method of surrender; exoneration of obligors.--

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1 (3) The surety shall be exonerated of liability on the
2 bond if it is determined prior to breach of the bond that the
3 defendant is in any jail or prison and the surety agrees in
4 writing to pay the transportation cost of returning the
5 defendant to the jurisdiction of the court. For purposes of
6 this subsection, "jurisdiction" means within the judicial
7 circuit as prescribed by law.

8 Section 5. Subsection (5) of section 903.26, Florida
9 Statutes, is amended, and subsection (8) is added to that
10 section, to read:

11 903.26 Forfeiture of the bond; when and how directed;
12 discharge; how and when made; effect of payment.--

13 (5) The court shall ~~may~~ discharge a forfeiture within
14 60 ~~35~~ days upon:

15 (a) A determination that it was impossible for the
16 defendant to appear as required due to circumstances beyond
17 the defendant's control. The potential adverse economic
18 consequences of appearing as required shall not be considered
19 as constituting a ground for such a determination;

20 (b) A determination that, at the time of the required
21 appearance, the defendant was adjudicated insane and confined
22 in an institution or hospital or was confined in a jail or
23 prison; or

24 (c) Surrender or arrest of the defendant if the delay
25 has not thwarted the proper prosecution of the defendant. If
26 the forfeiture has been before discharge, the court shall
27 direct remission of the forfeiture. The court shall condition
28 a discharge or remission on the payment of costs and the
29 expenses incurred by an official in returning the defendant to
30 the jurisdiction of the court.

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1 (8) If the defendant is arrested and returned to the
2 county of jurisdiction of the court prior to judgment, the
3 clerk, upon affirmation by the sheriff or chief correctional
4 officer, without further order of the court, shall set aside
5 the forfeiture and discharge the bond. However, if the surety
6 agent fails to pay the costs and expenses incurred in
7 returning the defendant to the county of jurisdiction, the
8 clerk shall not discharge the forfeiture. In the event the
9 surety agent and county attorney fail to agree on the amount
10 of said costs, then the court, upon notice to the county
11 attorney, shall decide the matter.

12 Section 6. Subsections (1), (3), (4), and (5) of
13 section 903.27, Florida Statutes, are amended to read:

14 903.27 Forfeiture to judgment.--

15 (1) If the forfeiture is not paid or discharged by
16 order of a court of competent jurisdiction within 60 ~~35~~ days
17 and the bond is secured other than by money and bonds
18 authorized in s. 903.16, the clerk of the circuit court for
19 the county where the order was made shall enter a judgment
20 against the surety for the amount of the penalty and issue
21 execution. Within 10 days, the clerk shall furnish the
22 Department of Insurance with a certified copy of the judgment
23 docket and shall furnish the surety company at its home office
24 a copy of the judgment, which shall include the power of
25 attorney number of the bond and the name of the executing
26 agent. If the judgment is not paid within 35 ~~60~~ days, the
27 clerk shall furnish the Department of Insurance and the
28 sheriff of the county in which the bond was executed, or the
29 official responsible for operation of the county jail, if
30 other than the sheriff, two copies of the judgment and a
31 certificate stating that the judgment remains unsatisfied.

1 When and if the judgment is properly paid or an order to
2 vacate the judgment has been entered by a court of competent
3 jurisdiction, the clerk shall immediately notify the sheriff,
4 or the official responsible for the operation of the county
5 jail, if other than the sheriff, and the Department of
6 Insurance, if the department had been previously notified of
7 nonpayment, of such payment or order to vacate the judgment.
8 The clerk shall also immediately prepare and record in the
9 public records a satisfaction of the judgment or record the
10 order to vacate judgment. If a defendant is returned to the
11 county of jurisdiction of the court, whenever a motion to set
12 aside the judgment is filed, the operation of this section is
13 tolled until the court makes a disposition of the motion.

14 (3) Surety bail bonds may not be executed by a bail
15 bond agent against whom a judgment has been entered which has
16 remained unpaid for 35 ~~60~~ days and may not be executed for a
17 company against whom a judgment has been entered which has
18 remained unpaid for 50 ~~75~~ days. No sheriff or other official
19 who is empowered to accept or approve surety bail bonds shall
20 accept or approve such a bond executed by such a bail bond
21 agent or executed for such a company until such judgment has
22 been paid.

23 (4) After notice of judgment against the surety given
24 by the clerk of the circuit court, the surety or bail bond
25 agent shall, within 35 ~~60~~ days of the entry of judgment,
26 submit to the clerk of the circuit court an amount equal to
27 the judgment, unless the judgment has been set aside by the
28 court within 35 ~~60~~ days of the entry of judgment. If a motion
29 to set aside the judgment has been filed pursuant to
30 subsection (5), the amount submitted shall be held in escrow
31 until such time as the court has disposed of the motion. The

1 failure to comply with the provisions of this subsection
2 constitutes a failure to pay the judgment.

3 (5) After notice of judgment against the surety given
4 by the clerk of the circuit court, the surety or bail bond
5 agent may within 35 ~~60~~ days file a motion to set aside the
6 judgment or to stay the judgment. It shall be a condition of
7 any such motion and of any order to stay the judgment that the
8 surety pay the amount of the judgment to the clerk, which
9 amount shall be held in escrow until such time as the court
10 has disposed of the motion to set aside the judgment. The
11 filing of such a motion, when accompanied by the required
12 escrow deposit, shall act as an automatic stay of further
13 proceedings, including execution, until the motion has been
14 heard and a decision rendered by the court.

15 Section 7. Section 903.28, Florida Statutes, is
16 amended to read:

17 903.28 Remission of forfeiture; conditions.--

18 (1) On application within 2 years from forfeiture, the
19 court shall order remission of the forfeiture if it determines
20 that there was no breach of the bond.

21 (2) If the defendant surrenders or is apprehended
22 within 90 days after forfeiture, the court, on motion at a
23 hearing upon notice having been given to the county attorney
24 and state attorney as required in subsection (8), shall ~~may~~
25 direct remission of up to, but not more than, 100 percent of a
26 forfeiture if the surety apprehended and surrendered the
27 defendant or if the apprehension or surrender of the defendant
28 was substantially procured or caused by the surety, or the
29 surety has substantially attempted to procure or cause the
30 apprehension or surrender of the defendant, and the delay has
31 not thwarted the proper prosecution of the defendant. In

1 addition, remission shall ~~may~~ be granted when the surety did
2 not substantially participate or attempt to participate in the
3 apprehension or surrender of the defendant when the costs of
4 returning the defendant to the jurisdiction of the court have
5 been deducted from the remission and when the delay has not
6 thwarted the proper prosecution of the defendant.

7 (3) If the defendant surrenders or is apprehended
8 within 180 days after forfeiture, the court, on motion at a
9 hearing upon notice having been given to the county attorney
10 and state attorney as required in subsection (8), shall ~~may~~
11 direct remission of up to, but not more than, 95 percent of a
12 forfeiture if the surety apprehended and surrendered the
13 defendant or if the apprehension or surrender of the defendant
14 was substantially procured or caused by the surety, or the
15 surety has substantially attempted to procure or cause the
16 apprehension or surrender of the defendant, and the delay has
17 not thwarted the proper prosecution of the defendant. In
18 addition, remission shall ~~may~~ be granted when the surety did
19 not substantially participate or attempt to participate in the
20 apprehension or surrender of the defendant when the costs of
21 returning the defendant to the jurisdiction of the court have
22 been deducted from the remission and when the delay has not
23 thwarted the proper prosecution of the defendant.

24 (4) If the defendant surrenders or is apprehended
25 within 270 days after forfeiture, the court, on motion at a
26 hearing upon notice having been given to the county attorney
27 and state attorney as required in subsection (8), shall ~~may~~
28 direct remission of up to, but not more than, 90 percent of a
29 forfeiture if the surety apprehended and surrendered the
30 defendant or if the apprehension or surrender of the defendant
31 was substantially procured or caused by the surety, or the

1 surety has substantially attempted to procure or cause the
2 apprehension or surrender of the defendant, and the delay has
3 not thwarted the proper prosecution of the defendant. In
4 addition, remission shall ~~may~~ be granted when the surety did
5 not substantially participate or attempt to participate in the
6 apprehension or surrender of the defendant when the costs of
7 returning the defendant to the jurisdiction of the court have
8 been deducted from the remission and when the delay has not
9 thwarted the proper prosecution of the defendant.

10 (5) If the defendant surrenders or is apprehended
11 within 1 year after forfeiture, the court, on motion at a
12 hearing upon notice having been given to the county attorney
13 and state attorney as required in subsection (8), shall ~~may~~
14 direct remission of up to, but not more than, 85 percent of a
15 forfeiture if the surety apprehended and surrendered the
16 defendant or if the apprehension or surrender of the defendant
17 was substantially procured or caused by the surety, or the
18 surety has substantially attempted to procure or cause the
19 apprehension or surrender of the defendant, and the delay has
20 not thwarted the proper prosecution of the defendant. In
21 addition, remission shall ~~may~~ be granted when the surety did
22 not substantially participate or attempt to participate in the
23 apprehension or surrender of the defendant when the costs of
24 returning the defendant to the jurisdiction of the court have
25 been deducted from the remission and when the delay has not
26 thwarted the proper prosecution of the defendant.

27 (6) If the defendant surrenders or is apprehended
28 within 2 years after forfeiture, the court, on motion at a
29 hearing upon notice having been given to the county attorney
30 and state attorney as required in subsection (8), shall ~~may~~
31 direct remission of up to, but not more than, 50 percent of a

1 forfeiture if the surety apprehended and surrendered the
2 defendant or if the apprehension or surrender of the defendant
3 was substantially procured or caused by the surety, or the
4 surety has substantially attempted to procure or cause the
5 apprehension or surrender of the defendant, and the delay has
6 not thwarted the proper prosecution of the defendant. In
7 addition, remission shall ~~may~~ be granted when the surety did
8 not substantially participate or attempt to participate in the
9 apprehension or surrender of the defendant when the costs of
10 returning the defendant to the jurisdiction of the court have
11 been deducted from the remission and when the delay has not
12 thwarted the proper prosecution of the defendant.

13 (7) The remission of a forfeiture may not be ordered
14 for any reason other than as specified herein.

15 (8) An application for remission must be accompanied
16 by affidavits setting forth the facts on which it is founded;
17 however, the surety must establish by further documentation or
18 other evidence any claimed attempt at procuring or causing the
19 apprehension or surrender of the defendant before the court
20 may order remission based upon an attempt to procure or cause
21 such apprehension or surrender. The state attorney and the
22 county attorney must be given 20 days' notice before a hearing
23 on an application and be furnished copies of all papers,
24 applications, and affidavits. Remission shall be granted on
25 the condition of payment of costs, unless the ground for
26 remission is that there was no breach of the bond.

27 Section 8. Section 903.31, Florida Statutes, is
28 amended to read:

29 903.31 Canceling the bond.--

30 (1) Within 10 business days after the conditions of a
31 bond have been satisfied or the forfeiture discharged or

1 remitted, the court shall order the bond canceled and, if the
2 surety has attached a certificate of cancellation to the
3 original bond, shall furnish an executed certificate of
4 cancellation to the surety without cost. An adjudication of
5 guilt or innocence of the defendant shall satisfy the
6 conditions of the bond. The original appearance bond shall
7 expire 36 months after such bond has been posted for the
8 release of the defendant from custody. This subsection does
9 not apply to cases in which a bond has been declared
10 forfeited.

11 (2) The original appearance bond shall not be
12 construed to guarantee deferred sentences, appearance during
13 or after a presentence investigation, appearance during or
14 after appeals, conduct during or appearance after admission to
15 a pretrial intervention program, payment of fines, or
16 attendance at educational or rehabilitation facilities the
17 court otherwise provides in the judgment. If the original
18 appearance bond has been forfeited or revoked, the bond shall
19 not be reinstated without approval from the surety on the
20 original bond.

21 Section 9. This act shall take effect October 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1516

4 Deletes the changes in the original bill to the reporting
5 schedule for continuing education requirements for bail bond
6 agents.

7 Amends s. 648.386, F.S., to allow continuing education courses
8 to be taught by guest lecturers approved by the continuing
9 education school or the supervising instructor. The
10 supervising instructor is required to be present at all
11 classes.

12 Reduces the period of time a bail bond agent has to satisfy a
13 judgment on a bond from 60 to 35 days. The committee
14 substitute amends s. 648.386, F.S., to conform with the
15 amendments to s.903.27, F.S.

16 Provides that in a bail application, inaccuracies or omissions
17 by county, correctional, or court employees shall not be
18 grounds for discharging a forfeiture or setting aside a
19 judgment.

20 Revises the amendment to s. 903.26, F.S., regarding forfeiture
21 of bond, removing the provision requiring the court to
22 discharge a forfeiture within 60 days upon an agreement by the
23 bail bond agent to pay to bring the defendant back to the
24 jurisdiction of the court, but another state refuses to
25 extradite the defendant. Adds a provision that the clerk, upon
26 affirmation of the sheriff or chief correctional officer,
27 shall set aside the forfeiture and discharge the bond, without
28 further order of the court shall decide the matter.

29 Provides that when a motion to set aside judgment is filed,
30 the time requirements of s. 903.27, F.S., dealing with
31 judgment on forfeiture, are tolled if a defendant is returned
32 to the jurisdiction of the court, until the court makes a
33 disposition on the motion. Surety bail bonds may not be
34 executed for a company against whom a judgment has been
35 entered, if the judgment has remained unpaid for 50 days,
36 rather than 75 days set forth in current law.

37 Shortens the period of time in which a surety or bail bond
38 agent may file a motion to set aside the judgment or stay the
39 judgment to 35 days, instead of 60 days.

40 Deletes the amendment to s.903.28(6), F.S., changing the time
41 period for the defendant's surrender or apprehension after
42 forfeiture in which the court shall direct remission of up to
43 50 percent of a forfeiture back to within 2 years, instead of
44 after 1 year.

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