

By Senator Silver

38-481-01

1 A bill to be entitled
2 An act relating to bail bond and surety agents;
3 amending s. 648.29, F.S.; revising requirements
4 for build-up funds posted by a bail bond agent;
5 amending s. 648.33, F.S.; authorizing an agent
6 to charge certain transfer fees for use of a
7 credit card; requiring that the schedule of
8 fees be conspicuously posted; amending s.
9 648.34, F.S.; requiring that a bail bond office
10 have a separate entrance; amending ss. 648.385,
11 648.386, F.S., relating to continuing education
12 requirements for bail bond agents; clarifying
13 the minimum course requirements; revising
14 requirements for instructors of continuing
15 education; amending s. 648.44, F.S.;
16 prohibiting a bail bond agent from initiating
17 contact with certain individuals for purposes
18 of soliciting business; amending s. 648.571,
19 F.S.; authorizing an agent to charge certain
20 fees for use of a credit card; requiring that
21 the schedule of fees be conspicuously posted;
22 amending s. 903.045, F.S.; requiring that
23 payment made on a bond be remitted to the
24 surety under certain circumstances when the
25 state fails to extradite a defendant; amending
26 s. 903.046, F.S.; providing that a defendant
27 charged with a second or subsequent felony
28 within a specified period is not presumed to be
29 entitled to release on nonmonetary conditions;
30 amending s. 903.26, F.S.; deleting a limitation
31 on the circumstances under which a forfeiture

1 may be discharged; revising requirements for
2 assessing costs against a surety; amending s.
3 903.28, F.S.; requiring that interest be paid
4 on any ordered payment of remission which
5 remains unpaid after a specified period;
6 amending s. 903.31, F.S.; specifying
7 circumstances under which the bond does not
8 guarantee the defendant's conduct or
9 appearance; amending s. 907.041, F.S.;
10 requiring that certain pretrial services be
11 verified to the court in writing; providing an
12 effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsections (1) and (2) of section 648.29,
17 Florida Statutes, are amended to read:

18 648.29 Build-up funds posted by bail bond agent.--

19 (1) All build-up funds posted by a bail bond agent or
20 managing general agent, either with the insurer or managing
21 general agent representing such insurer, must be maintained in
22 an individual build-up trust account for the bail bond agent
23 by the insurer or the managing general agent in a bank or
24 savings and loan association in this state jointly in the name
25 of the bail bond agent and the surety or managing general
26 agent; in United States Government bonds, treasury
27 certificates, or other obligations for which the faith of the
28 United States is pledged for the payment of principal and
29 interest held jointly in the name of the bail bond agent and
30 the surety or managing general agent; or in trust for the bail
31 bond agent by the surety or managing general agent. The trust

1 account ~~and~~ is open to inspection and examination by the
2 department at all times. An accounting of all such funds shall
3 be maintained which designates the amounts collected on each
4 bond written.

5 (2) Build-up funds may not exceed 40 percent of the
6 premium, as established by the insurer's rate of premium filed
7 with the department ~~agent's contract agreement with the~~
8 ~~insurer or managing general agent~~. Build-up funds received
9 shall be immediately deposited to the build-up trust account.
10 Interest on such accounts shall accrue to the bail bond agent.

11 Section 2. Section 648.33, Florida Statutes, is
12 amended to read:

13 648.33 Bail bond rates.--

14 (1) Bail bond rates are subject to the provisions of
15 part I of chapter 627 of the insurance code.

16 (2) ~~It is unlawful for~~ A bail bond agent may not to
17 execute a bail bond without charging a premium therefor, and
18 the premium rate may not exceed or be less than the premium
19 rate ~~as~~ filed with and approved by the department. A bail bond
20 agent may charge a transfer fee for a bail bond at the rate
21 filed with the department. The bail bond agent may charge the
22 fee imposed in connection with the use of a credit card for
23 payment of the premium. The premium receipt must clearly show
24 the fee and be acknowledged by the person tendering the credit
25 card. The prevailing schedule of credit card fees must be
26 conspicuously posted in the lobby of the bail bond agency.

27 (3) Any person who violates this section commits a
28 misdemeanor of the first degree, punishable as provided in s.
29 775.082 or s. 775.083.

30 Section 3. Paragraph (c) of subsection (2) of section
31 648.34, Florida Statutes, is amended to read:

1 648.34 Bail bond agents; qualifications.--

2 (2) To qualify as a bail bond agent, it must
3 affirmatively appear at the time of application and throughout
4 the period of licensure that the applicant has complied with
5 the provisions of s. 648.355 and has obtained a temporary
6 license pursuant to such section and:

7 (c) The place of business of the applicant ~~is will be~~
8 located in this state and in the county where the applicant
9 will maintain his or her records and be actively engaged in
10 the bail bond business and maintain an agency accessible to
11 the public, which is open for reasonable business hours. Each
12 bail bond agency and any branch office must have a separate
13 and distinct entrance that is easily accessible to the public
14 and used in the regular course of business. Each bail bond
15 agency must be located separate and apart from any other
16 agency that conducts bail bond business.

17 Section 4. Paragraph (a) of subsection (2) of section
18 648.385, Florida Statutes, is amended to read:

19 648.385 Continuing education required; application;
20 exceptions; requirements; penalties.--

21 (2)(a) ~~For compliance dates beginning in January 1997~~
22 ~~and thereafter,~~Each person subject to the provisions of this
23 chapter must complete a minimum of 14 hours, cumulatively, of
24 continuing education courses during every 2-year renewal
25 period 2 years in courses approved by the department.

26 Compliance with continuing education requirements is a
27 condition precedent to the issuance, continuation, or renewal
28 of any appointment subject to the provisions of this chapter.

29 Section 5. Paragraph (c) of subsection (2) and
30 paragraph (b) of subsection (4) of section 648.386, Florida
31 Statutes, are amended to read:

1 648.386 Qualifications for prelicensing and continuing
2 education schools and instructors.--

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

8 (c) Offer continuing education classes that ~~which~~ are
9 comprised of a minimum of 2 hours of approved coursework and
10 are taught by an approved supervising instructor or guest
11 lecturer approved by the entity or the supervising instructor.
12 A video tape used for continuing education may not have a
13 playing time of greater than 30 minutes.

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

15 (b) In order to obtain department approval as a
16 supervising instructor, the following qualifications must be
17 met:

18 1. During the past 10 years, the person must have had
19 at least 10 ~~5~~ years' experience as a manager or officer of a
20 managing general agent in this state as prescribed in s.
21 648.388;

22 2. During the past 10 years, the person must have had
23 at least 10 ~~5~~ years' experience as a manager or officer of an
24 insurance company authorized to and actively engaged in
25 underwriting bail in this state, provided there is a showing
26 that the manager's or officer's experience is directly related
27 to the bail bond industry; or

28 3. The person has been a licensed bail bond agent in
29 this state for at least 10 years.

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31

1 Section 6. Paragraph (b) of subsection (1) and
2 subsection (9) of section 648.44, Florida Statutes, are
3 amended to read:

4 648.44 Prohibitions; penalty.--

5 (1) A bail bond agent, temporary bail bond agent, or
6 runner may not:

7 (b) Directly or indirectly solicit business in or on
8 the property or grounds of a jail, prison, or other place
9 where prisoners are confined or in or on the property or
10 grounds of any court. The term "solicitation" includes the
11 distribution of business cards, print advertising, or other
12 written information directed to prisoners or potential
13 indemnitors, unless a request is initiated by the prisoner or
14 a potential indemnitor. The term "solicitation" also includes
15 initiating contact with a prisoner, potential indemnitor, or
16 member of a prisoner's family as a result of information
17 obtained from any written or electronic document that is
18 produced by or originates from the court, clerk's office, or
19 county jail. Permissible print advertising in the jail is
20 strictly limited to a listing in a telephone directory and the
21 posting of the bail bond agency's name, address, and telephone
22 number in a designated location within the jail.

23 (9)(a) Any person who violates any provisions of
24 paragraph (1)(b), paragraph (1)(d), paragraph (1)(e),
25 paragraph (1)(f), paragraph (1)(i), or paragraph (1)(m) or
26 subsection (2) commits a felony of the third degree,
27 punishable as provided in s. 775.082, s. 775.083, or s.
28 775.084.

29 (b) Any person who violates the provisions of
30 paragraph (1)(a), ~~paragraph (1)(b)~~, paragraph (1)(g),
31 paragraph (1)(j), or paragraph (1)(l), subsection (3),

1 subsection (4), or subsection (5) commits a misdemeanor of the
2 first degree, punishable as provided in s. 775.082 or s.
3 775.083.

4 Section 7. Section 648.571, Florida Statutes, is
5 amended to read:

6 648.571 Failure to return collateral; penalty.--A bail
7 bond agent who has taken collateral or an insurer or managing
8 general agent who holds collateral as security for a bail bond
9 shall, upon demand, make a written request for a discharge of
10 the bond to be delivered to the surety or the agent of the
11 surety. If a discharge is provided to the surety or the agent
12 of the surety pursuant to chapter 903, the collateral shall be
13 returned to the indemnitor within 21 days after the ~~of said~~
14 ~~discharge is being~~ provided. Upon demand, following the
15 written request for discharge and upon diligent inquiry by the
16 surety or the agent of the surety to determine that the bond
17 has been discharged, failure of the court to provide a written
18 discharge to the surety or the agent of the surety pursuant to
19 chapter 903 within 7 days, shall cause the cancellation of the
20 bond by operation of law and collateral shall be returned to
21 the indemnitor within 21 days after ~~of~~ the written request for
22 discharge. Fees or other charges of any nature other than as
23 outlined in this chapter or by rule of the department may not
24 be deducted from the collateral due. However, the bail bond
25 agent may charge the fee imposed in connection with the use of
26 a credit card for payment of collateral if the fee is clearly
27 shown on the collateral receipt and is acknowledged by the
28 person tendering the credit card. The prevailing schedule of
29 credit card fees must be conspicuously posted in the lobby of
30 the bail bond agency. Allowable expenses incurred in the
31 apprehension of the defendant because of a forfeiture of bond

1 or judgment under s. 903.29 may be deducted if such expenses
2 are accounted for. Failure to return collateral under these
3 terms shall be punishable:

4 (1) In the event the collateral is of a value of less
5 than \$100, as provided in s. 775.082(4)(a).

6 (2) In the event the collateral is of a value of \$100
7 or more, as provided in s. 775.082(3)(d).

8 (3) In the event the collateral is of a value of
9 \$1,500 or more, as provided in s. 775.082(3)(c).

10 (4) In the event the collateral is of a value of
11 \$10,000 or more, as provided in s. 775.082(3)(b).

12 Section 8. Section 903.045, Florida Statutes, is
13 amended to read:

14 903.045 Nature of criminal surety bail bonds.--

15 (1) It is the public policy of this state and the
16 intent of the Legislature that a criminal surety bail bond,
17 executed by a bail bond agent licensed pursuant to chapter 648
18 in connection with the pretrial or appellate release of a
19 criminal defendant, shall be construed as a commitment by and
20 an obligation upon the bail bond agent to ensure that the
21 defendant appears at all subsequent criminal proceedings and
22 otherwise fulfills all conditions of the bond. The failure of
23 a defendant to appear at any subsequent criminal proceeding or
24 the breach by the defendant of any other condition of the bond
25 constitutes a breach by the bail bond agent of this commitment
26 and obligation.

27 (2) The Legislature favors the policy of maintaining
28 the integrity of the judicial process above enriching the
29 state's finances. If the state attorney fails to institute
30 extradition proceedings against a defendant or fails to
31 extradite the principal on a bail bond after the surety has

1 agreed in writing to pay the actual cost of transportation,
2 the surety is exonerated, any forfeiture or judgment shall be
3 set aside or vacated, and any payment made by the surety of a
4 forfeiture or judgment shall be remitted in full.

5 Section 9. Subsection (3) is added to section 903.046,
6 Florida Statutes, to read:

7 903.046 Purpose of and criteria for bail
8 determination.--

9 (3) If a defendant is charged with a second or
10 subsequent felony within 3 years after the date of a prior
11 felony charge, regardless of whether a conviction was entered,
12 the defendant forfeits the right to a presumption in favor of
13 release on nonmonetary conditions as provided in s. 907.041.

14 Section 10. Paragraph (c) of subsection (2) and
15 subsections (5), (6), (7), and (8) of section 903.26, Florida
16 Statutes, are amended to read:

17 903.26 Forfeiture of the bond; when and how directed;
18 discharge; how and when made; effect of payment.--

19 (2)

20 (c) If there is a breach of the bond, the clerk shall
21 provide, without cost and upon request, a certified copy of
22 the warrant or capias to the bail bond agent or surety
23 company.

24 (5) The court shall discharge a forfeiture within 60
25 days upon:

26 (a) A determination that it was impossible for the
27 defendant to appear as required due to circumstances beyond
28 the defendant's control. The potential adverse economic
29 consequences of appearing as required shall not be considered
30 as constituting a ground for such a determination;
31

1 (b) A determination that, at the time of the required
2 appearance, the defendant was adjudicated insane and confined
3 in an institution or was in a hospital, ~~or was confined in a~~
4 ~~jail, or prison; or~~

5 (c) Surrender or arrest of the defendant if the delay
6 has not thwarted the proper prosecution of the defendant. If
7 the forfeiture has been before discharge, the court shall
8 direct remission of the forfeiture. The court shall condition
9 a discharge or remission on the payment of costs and the
10 expenses incurred by an official in returning the defendant to
11 the jurisdiction of the court.

12 ~~(6) The discharge of a forfeiture shall not be ordered~~
13 ~~for any reason other than as specified herein.~~

14 ~~(6)(7)~~ The payment by a surety of a forfeiture under
15 the provisions of this law shall have the same effect on the
16 bond as payment of a judgment.

17 ~~(7)(8)~~ If the defendant is arrested outside the state
18 or county of jurisdiction and returned or surrendered by the
19 surety to the county of jurisdiction of the court prior to
20 judgment, the clerk, upon affirmation by the sheriff or the
21 chief correctional officer, shall, without further order of
22 the court, discharge the forfeiture of the bond and discharge
23 the bond. However, if the surety agent fails to pay the costs
24 of transportation and expenses incurred in returning the
25 defendant to the county of jurisdiction, the clerk shall not
26 discharge the forfeiture of the bond. If the surety agent
27 apprehends and surrenders the defendant, costs may not be
28 assessed against the surety. If the surety agent and the
29 county attorney fail to agree on the amount of said costs,
30 then the court, after notice to the county attorney, shall
31 determine the amount of the costs.

1 Section 11. Subsection (9) is added to section 903.28,
2 Florida Statutes, to read:

3 903.28 Remission of forfeiture; conditions.--

4 (9) If remission is not paid within 45 days after the
5 date of the court's order granting remission of a forfeiture,
6 interest shall accrue from the date of the order at the
7 prevailing rate of interest for short-term loans, and must be
8 paid in addition to the amount of the remission.

9 Section 12. Section 903.31, Florida Statutes, is
10 amended to read:

11 903.31 Canceling the bond.--

12 (1) Within 10 business days after the conditions of a
13 bond have been satisfied or the forfeiture discharged or
14 remitted, ~~the court shall order~~ the bond shall be canceled
15 and, if the surety has attached a certificate of cancellation
16 to the original bond, the clerk of the court shall furnish an
17 executed certificate of cancellation to the surety without
18 cost. An adjudication of guilt or innocence of the defendant
19 shall satisfy the conditions of the bond. The original
20 appearance bond shall expire 36 months after such bond has
21 been posted for the release of the defendant from custody.
22 This subsection does not apply to cases in which a bond has
23 been declared forfeited.

24 (2) The original appearance bond does ~~shall~~ not be
25 ~~construed to~~ guarantee deferred sentences, appearance during
26 or after a presentence investigation, appearance during or
27 after appeals, ~~conduct during or appearance after admission to~~
28 ~~a pretrial intervention program,~~ payment of fines, or
29 attendance at educational or rehabilitation facilities the
30 court otherwise provides in the judgment. If the original
31 appearance bond has been forfeited or revoked, the bond shall

1 not be reinstated without approval from the surety on the
2 original bond.

3 (3) The original appearance bond does not guarantee
4 the defendant's conduct or appearance in court at any time
5 after:

6 (a) The defendant enters a plea of guilty or no
7 contest.

8 (b) The defendant enters into an agreement for
9 deferred prosecution or agrees to enter a pretrial
10 intervention program.

11 (c) The defendant is acquitted.

12 (d) The defendant is adjudicated guilty.

13 (e) Adjudication of guilt of the defendant is
14 withheld.

15 (f) The defendant is found guilty by a judge or jury.

16 (4)(3) In any case where no formal charges have been
17 brought against the defendant within 365 days after arrest,
18 the court shall order the bond canceled unless good cause is
19 shown by the state.

20 Section 13. Paragraph (b) of subsection (3) of section
21 907.041, Florida Statutes, is amended to read:

22 907.041 Pretrial detention and release.--

23 (3) RELEASE ON NONMONETARY CONDITIONS.--

24 (b) A ~~No~~ person may not ~~shall~~ be released on
25 nonmonetary conditions under the supervision of a pretrial
26 release service, unless the service certifies to the court in
27 writing that it has investigated or otherwise verified:

28 1. The circumstances of the accused's family,
29 employment, financial resources, character, mental condition,
30 and length of residence in the community;

31

1 2. The accused's record of convictions, of appearances
2 at court proceedings, of flight to avoid prosecution, or of
3 failure to appear at court proceedings; and

4 3. Other facts necessary to assist the court in its
5 determination of the indigency of the accused and whether she
6 or he should be released under the supervision of the service.

7 Section 14. This act shall take effect October 1,
8 2001.

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11 SENATE SUMMARY

12 Revises various provisions governing the performance of
13 bail bond agents and surety agents. Provides that a bail
14 bond agent may secure build-up funds with United States
15 securities. Authorizes certain credit card fees. Revises
16 requirements for a bail bond office. Provides minimum
17 course requirements for continuing education for bail
18 bond agents. Prohibits a bail bond agent from using
19 certain information to solicit business. Revises
20 requirements for remitting to the surety the payment made
21 on a bond. Provides that if a defendant is charged with a
22 second or subsequent felony within 3 years, there is no
23 presumption that the defendant is entitled to release on
24 nonmonetary conditions. Revises requirements for
25 assessing costs against a surety. Requires the payment of
26 interest on an order of remission which remains unpaid
27 after 45 days. Provides that the original appearance bond
28 does not guarantee the defendant's conduct or appearance
29 under certain circumstances. (See bill for details.)
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