

By Representative Cantens

1                                   A bill to be entitled  
2           An act relating to bail bonds; amending s.  
3           648.29, F.S.; providing for build-up funds to  
4           be maintained in government bonds,  
5           certificates, or certain other obligations;  
6           providing that the limitation on build-up funds  
7           be established by the rate of premium filed by  
8           the insurance company; amending s. 648.33,  
9           F.S.; permitting certain fees to be charged  
10          with regard to transfers or use of credit  
11          cards; requiring certain notice of such fees;  
12          amending s. 648.34, F.S.; requiring separate  
13          entrances for each bail bond agency and branch  
14          office; amending s. 648.385, F.S.; revising  
15          language relating to continuing education  
16          requirements for bail bond agents; amending s.  
17          648.386, F.S.; prohibiting the use of certain  
18          video instruction tapes in continuing education  
19          classes; increasing the number of years of  
20          experience as a manager or officer required for  
21          department approval as a supervising  
22          instructor; amending s. 648.44, F.S.;  
23          prohibiting certain contact by a bail bond  
24          agent or runner; providing penalties; amending  
25          s. 648.571, F.S.; permitting a bail bond agent  
26          to charge certain fees when accepting a credit  
27          card for collateral; requiring the fee to be  
28          stated and the fee schedule to be posted;  
29          amending s. 903.045, F.S.; providing for  
30          exoneration of the surety upon failure of the  
31          state to extradite the principal on a bail bond

1 under certain circumstances; amending s.  
2 903.046, F.S.; providing that a defendant  
3 charged with a second or subsequent felony  
4 within a certain period shall forfeit the  
5 presumption in favor of nonmonetary release,  
6 under certain circumstances; amending s.  
7 903.21, F.S.; providing penalties for an  
8 official who refuses to take a defendant into  
9 custody; amending s. 903.26, F.S.; requiring  
10 the clerk to provide a certified copy of  
11 warrant or capias at no cost under certain  
12 circumstances; deleting provision relating to  
13 prohibition of the discharge of a forfeiture;  
14 providing circumstances for discharge of  
15 forfeiture of bond, discharge of bond, and  
16 assessment of costs for defendants arrested  
17 outside the county or state of jurisdiction;  
18 amending s. 903.28, F.S.; providing for  
19 interest to accrue on remission of forfeiture  
20 under certain circumstances; amending s.  
21 903.31, F.S.; revising provisions relating to  
22 cancellation of bond; providing circumstances  
23 under which an appearance bond does not  
24 guarantee a defendant's conduct or appearance  
25 in court; amending s. 907.041, F.S.; requiring  
26 certification to the court in writing of  
27 certain information prior to release on  
28 nonmonetary conditions; providing an effective  
29 date.

30  
31 Be It Enacted by the Legislature of the State of Florida:

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

3           648.29 Build-up funds posted by bail bond agent.--

4           (1) All build-up funds posted by a bail bond agent or  
5 managing general agent, either with the insurer or managing  
6 general agent representing such insurer, must be maintained in  
7 an individual build-up trust account for the bail bond agent  
8 by the insurer or the managing general agent in a bank or  
9 savings and loan association, or in United States Government  
10 bonds, United States Treasury certificates, or other  
11 obligations for which the full faith and credit of the United  
12 States is pledged for the payment of principal and interest,  
13 in this state jointly in the name of the bail bond agent and  
14 the surety or managing general agent or in trust for the bail  
15 bond agent by the surety or managing general agent and is open  
16 to inspection and examination by the department at all times.  
17 An accounting of all such funds shall be maintained which  
18 designates the amounts collected on each bond written.

19           (2) Build-up funds may not exceed 40 percent of the  
20 premium as established by the rate of premium filed by the  
21 insurance company with the department ~~agent's contract~~  
22 ~~agreement with the insurer or managing general agent.~~ Build-up  
23 funds received shall be immediately deposited to the build-up  
24 trust account. Interest on such accounts shall accrue to the  
25 bail bond agent.

26           Section 2. Subsection (2) of section 648.33, Florida  
27 Statutes, is amended to read:

28           648.33 Bail bond rates.--

29           (2) It is unlawful for a bail bond agent to execute a  
30 bail bond without charging a premium therefor, and the premium  
31 rate may not exceed or be less than the premium rate as filed

1 with and approved by the department. Bail bond transfer fees  
2 may be charged at the rate of premium filed with the  
3 department. The bail bond agent may charge the amount of the  
4 fee charged by a credit card facility in connection with the  
5 use of a credit card for premium. The premium receipt must  
6 clearly state the fee and be acknowledged by the authorized  
7 credit card holder. The prevailing credit card fee schedule  
8 shall be clearly posted in the lobby of the bail bond agency.

9 Section 3. Paragraph (c) of subsection (2) of section  
10 648.34, Florida Statutes, is amended to read:

11 648.34 Bail bond agents; qualifications.--

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

17 (c) The place of business of the applicant will be  
18 located in this state and in the county where the applicant  
19 will maintain his or her records and be actively engaged in  
20 the bail bond business and maintain an agency accessible to  
21 the public which is open for reasonable business hours. Each  
22 bail bond agency and each branch office shall have a separate  
23 and distinct entrance easily accessible to the public and used  
24 by the bail bond agent in the regular course of business  
25 dealings with the public. Each agency shall be separate and  
26 apart from any other bail bond agency used to conduct bail  
27 bond business.

28 Section 4. Paragraph (a) of subsection (2) of section  
29 648.385, Florida Statutes, is amended to read:

30 648.385 Continuing education required; application;  
31 exceptions; requirements; penalties.--

1           (2)(a) ~~For compliance dates beginning in January 1997~~  
2 ~~and thereafter~~, Each person subject to the provisions of this  
3 chapter must cumulatively complete a minimum of 14 hours of  
4 continuing education courses every 2-year renewal period ~~2~~  
5 ~~years~~ in courses approved by the department. Compliance with  
6 continuing education requirements is a condition precedent to  
7 the issuance, continuation, or renewal of any appointment  
8 subject to the provisions of this chapter.

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

12           648.386 Qualifications for prelicensing and continuing  
13 education schools and instructors.--

14           (2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION  
15 SCHOOLS.--In order to be considered for approval and  
16 certification as an approved limited surety agent and  
17 professional bail bond agent continuing education school, such  
18 entity must:

19           (c) Offer continuing education classes which are  
20 comprised of a minimum of 2 hours of approved coursework and  
21 are taught by an approved supervising instructor or guest  
22 lecturer approved by the entity or the supervising instructor.  
23 Video instruction tapes longer than 30 minutes shall not be  
24 permitted.

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

26           (b) In order to obtain department approval as a  
27 supervising instructor, the following qualifications must be  
28 met:

29           1. During the past 10 years, the person must have had  
30 at least 10 ~~5~~ years' experience as a manager or officer of a  
31

1 managing general agent in this state as prescribed in s.  
2 648.388;

3 2. During the past 10 years, the person must have had  
4 at least 10 5 years' experience as a manager or officer of an  
5 insurance company authorized to and actively engaged in  
6 underwriting bail in this state, provided there is a showing  
7 that the manager's or officer's experience is directly related  
8 to the bail bond industry; or

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

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

14 648.44 Prohibitions; penalty.--

15 (1) A bail bond agent, temporary bail bond agent, or  
16 runner may not:

17 (b) Directly or indirectly solicit business in or on  
18 the property or grounds of a jail, prison, or other place  
19 where prisoners are confined or in or on the property or  
20 grounds of any court. The term "solicitation" includes the  
21 distribution of business cards, print advertising, or other  
22 written information directed to prisoners or potential  
23 indemnitors, unless a request is initiated by the prisoner or  
24 a potential indemnitor, or directly contacting the prisoner's  
25 family or potential indemnitors as a result of information  
26 obtained from any document, written or electronically  
27 produced, or originated by the court, office of the clerk of  
28 the circuit court of the county, or county jail, without first  
29 being contacted by the family, indemnitor, or prisoner.

30 Permissible print advertising in the jail is strictly limited  
31 to a listing in a telephone directory and the posting of the

1 bail bond agency's name, address, and telephone number in a  
2 designated location within the jail.

3 (9)(a) Any person who violates any provisions of  
4 paragraph (1)(b), paragraph (1)(d), paragraph (1)(e),  
5 paragraph (1)(f), paragraph (1)(i), or paragraph (1)(m) or  
6 subsection (2) commits a felony of the third degree,  
7 punishable as provided in s. 775.082, s. 775.083, or s.  
8 775.084.

9 (b) Any person who violates the provisions of  
10 paragraph (1)(a), ~~paragraph (1)(b),~~ paragraph (1)(g),  
11 paragraph (1)(j), or paragraph (1)(l), subsection (3),  
12 subsection (4), or subsection (5) commits a misdemeanor of the  
13 first degree, punishable as provided in s. 775.082 or s.  
14 775.083.

15 Section 7. Section 648.571, Florida Statutes, is  
16 amended to read:

17 648.571 Failure to return collateral; penalty.--A bail  
18 bond agent who has taken collateral or an insurer or managing  
19 general agent who holds collateral as security for a bail bond  
20 shall, upon demand, make a written request for a discharge of  
21 the bond to be delivered to the surety or the agent of the  
22 surety. If a discharge is provided to the surety or the agent  
23 of the surety pursuant to chapter 903, the collateral shall be  
24 returned to the indemnitor within 21 days of said discharge  
25 being provided. Upon demand, following the written request for  
26 discharge and upon diligent inquiry by the surety or the agent  
27 of the surety to determine that the bond has been discharged,  
28 failure of the court to provide a written discharge to the  
29 surety or the agent of the surety pursuant to chapter 903  
30 within 7 days, shall cause the cancellation of the bond by  
31 operation of law and collateral shall be returned to the

1 indemnitor within 21 days of the written request for  
2 discharge. Fees or other charges of any nature other than as  
3 outlined in this chapter or by rule of the department may not  
4 be deducted from the collateral due. However, the bail bond  
5 agent may charge the amount of the fee charged by a credit  
6 card facility in connection with the use of a credit card for  
7 collateral as long as the fee is clearly stated on the  
8 collateral receipt and is acknowledged by the authorized  
9 credit card holder. The prevailing credit card fee schedule  
10 shall be clearly posted in the lobby of the bail bond agency.

11 Allowable expenses incurred in the apprehension of the  
12 defendant because of a forfeiture of bond or judgment under s.  
13 903.29 may be deducted if such expenses are accounted for.

14 Failure to return collateral under these terms shall be  
15 punishable:

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

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

20 (3) In the event the collateral is of a value of  
21 \$1,500 or more, as provided in s. 775.082(3)(c).

22 (4) In the event the collateral is of a value of  
23 \$10,000 or more, as provided in s. 775.082(3)(b).

24 Section 8. Section 903.045, Florida Statutes, is  
25 amended to read:

26 903.045 Nature of criminal surety bail bonds.--

27 (1) It is the public policy of this state and the  
28 intent of the Legislature that a criminal surety bail bond,  
29 executed by a bail bond agent licensed pursuant to chapter 648  
30 in connection with the pretrial or appellate release of a  
31 criminal defendant, shall be construed as a commitment by and



1 an obligation upon the bail bond agent to ensure that the  
2 defendant appears at all subsequent criminal proceedings and  
3 otherwise fulfills all conditions of the bond. The failure of  
4 a defendant to appear at any subsequent criminal proceeding or  
5 the breach by the defendant of any other condition of the bond  
6 constitutes a breach by the bail bond agent of this commitment  
7 and obligation.

8 (2) It is the further intent of the Legislature to  
9 express its support of the judicial process above the  
10 acquisition of funds by the state. Failure of the state to  
11 institute extradition proceedings or extradite the principal  
12 on a bail bond, after the surety has agreed in writing to pay  
13 actual transportation costs, shall exonerate the surety and  
14 any forfeiture or judgment shall be set aside or vacated and  
15 any payment by the surety of a forfeiture or judgment shall be  
16 remitted in full.

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

19 903.046 Purpose of and criteria for bail  
20 determination.--

21 (3) A defendant who is charged with a second or  
22 subsequent felony within the present 3-year period, whether or  
23 not a conviction has been entered, shall forfeit the  
24 presumption in favor of nonmonetary release.

25 Section 10. Subsection (1) of section 903.21, Florida  
26 Statutes, is amended to read:

27 903.21 Method of surrender; exoneration of obligors.--

28 (1) A surety desiring to surrender a defendant shall  
29 deliver a copy of the bond and the defendant to the official  
30 who had custody of the defendant at the time bail was taken or  
31 to the official into whose custody the defendant would have

1 | been placed if she or he had been committed. The official  
2 | shall take the defendant into custody, ~~as on a commitment,~~ and  
3 | issue a certificate acknowledging the surrender. An official  
4 | who refuses to take the defendant into custody as provided in  
5 | this section shall be subject to criminal charges under s.  
6 | 839.21.

7 |         Section 11. Paragraph (c) of subsection (2), paragraph  
8 | (b) of subsection (5), and subsections (6), (7), and (8) of  
9 | section 903.26, Florida Statutes, are amended to read:

10 |         903.26 Forfeiture of the bond; when and how directed;  
11 | discharge; how and when made; effect of payment.--

12 |         (2)

13 |         (c) If there is a breach of the bond, the clerk shall  
14 | provide, upon request, a certified copy of the warrant or  
15 | capias to the bail bond agent or surety company at no cost.

16 |         (5) The court shall discharge a forfeiture within 60  
17 | days upon:

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

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

24 |         (6)~~(7)~~ The payment by a surety of a forfeiture under  
25 | the provisions of this law shall have the same effect on the  
26 | bond as payment of a judgment.

27 |         (7)~~(8)~~ If the defendant is arrested outside of the  
28 | county or state of jurisdiction and returned or surrendered by  
29 | the surety agent to the county of jurisdiction of the court  
30 | prior to judgment, the clerk, upon affirmation by the sheriff  
31 | or the chief correctional officer, shall, without further

1 order of the court, discharge the forfeiture of the bond and  
2 discharge the bond. However, if the surety agent fails to pay  
3 the costs of transportation ~~and expenses~~ incurred in returning  
4 the defendant to the county of jurisdiction, the clerk shall  
5 not discharge the forfeiture of the bond. If the surety agent  
6 apprehended and surrendered the defendant, costs shall not be  
7 assessed. If the surety agent and the county attorney fail to  
8 agree on the amount of said costs, then the court, after  
9 notice to the county attorney, shall determine the amount of  
10 the costs.

11 Section 12. Subsection (9) is added to section 903.28,  
12 Florida Statutes, to read:

13 903.28 Remission of forfeiture; conditions.--

14 (9) If remission has not been made within 45 days  
15 after the date on which the court ordered the remission,  
16 interest at the prevailing rate for short-term loans shall  
17 begin to accrue from the order date and shall be paid with the  
18 remission.

19 Section 13. Subsections (1) and (2) of section 903.31,  
20 Florida Statutes, are amended, subsection (3) is renumbered as  
21 subsection (4), and a new subsection (3) is added to said  
22 section, to read:

23 903.31 Canceling the bond.--

24 (1) Within 10 business days after the conditions of a  
25 bond have been satisfied or the forfeiture discharged or  
26 remitted, ~~the court shall order~~ the bond shall be canceled  
27 and, if the surety has attached a certificate of cancellation  
28 to the original bond, shall furnish an executed certificate of  
29 cancellation to the surety without cost. An adjudication of  
30 guilt or innocence of the defendant shall satisfy the  
31 conditions of the bond. The original appearance bond shall

1 expire 36 months after such bond has been posted for the  
2 release of the defendant from custody. This subsection does  
3 not apply to cases in which a bond has been declared  
4 forfeited.

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

15 (3) The original appearance bond shall not be  
16 construed to guarantee a defendant's conduct or appearance in  
17 court at any time after any of the following events has  
18 occurred:

19 (a) The defendant has entered a plea of guilty or no  
20 contest;

21 (b) The defendant has entered into a deferred  
22 prosecution agreement or pretrial intervention program;

23 (c) The defendant has been acquitted;

24 (d) The defendant has been adjudicated guilty;

25 (e) Adjudication of guilt has been withheld; or

26 (f) The defendant has been found guilty by a judge or  
27 jury.

28 Section 14. Paragraph (b) of subsection (3) of section  
29 907.041, Florida Statutes, is amended to read:

30 907.041 Pretrial detention and release.--

31 (3) RELEASE ON NONMONETARY CONDITIONS.--

1           (b) No person shall be released on nonmonetary  
2 conditions under the supervision of a pretrial release  
3 service, unless the service certifies to the court in writing  
4 that it has investigated and ~~or~~ otherwise verified:  
5           1. The circumstances of the accused's family,  
6 employment, financial resources, character, mental condition,  
7 and length of residence in the community;  
8           2. The accused's record of convictions, of appearances  
9 at court proceedings, of flight to avoid prosecution, or of  
10 failure to appear at court proceedings; and  
11           3. Other facts necessary to assist the court in its  
12 determination of the indigency of the accused and whether she  
13 or he should be released under the supervision of the service.  
14           Section 15. This act shall take effect July 1, 2001.

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HOUSE SUMMARY

Revises provisions relating to bail bonds, bail bond agents, and runners. Provides for build-up funds to be maintained in government bonds, certificates, or certain other obligations. Provides that the limitation on build-up funds be established by the rate of premium filed by the insurance company. Permits certain fees to be charged with regard to transfers or use of credit cards. Requires certain notice of such fees. Requires separate entrances for each bail bond agency and branch office.

Revises language relating to continuing education requirements for bail bond agents. Prohibits the use of certain video instruction tapes in continuing education classes. Increases the number of years of experience as a manager or officer required for department approval as a supervising instructor.

Prohibits certain contact by a bail bond agent or runner. Provides penalties. Permits a bail bond agent to charge certain fees when accepting a credit card for collateral. Requires the fee to be stated and the fee schedule to be posted. Provides for exoneration of the surety upon failure of the state to extradite the principal on a bail bond under certain circumstances. Provides that a defendant charged with a second or subsequent felony within a certain period shall forfeit the presumption in favor of nonmonetary release under certain circumstances. Provides penalties for an official who refuses to take a defendant into custody. Requires the clerk to provide a certified copy of warrant or capias at no cost under certain circumstances. Deletes a provision relating to prohibition of the discharge of a forfeiture. Provides circumstances for discharge of forfeiture of bond, discharge of bond, and assessment of costs for defendants arrested outside the county or state of jurisdiction. Provides for interest to accrue on remission of forfeiture under certain circumstances. Revises provisions relating to cancellation of bond. Provides circumstances under which an appearance bond does not guarantee a defendant's conduct or appearance in court. Requires certification to the court in writing of certain information prior to release on nonmonetary conditions. See bill for details.