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CS/CS/HB 361

2017 Legislature

1
2 An act relating to bail bonds; amending s. 903.045,
3 F.S.; revising legislative intent concerning the
4 obligations of a bail bond agent; revising the
5 commitments and obligations of a bail bond agent;
6 revising the circumstances that constitute a breach by
7 the bail bond agent; amending s. 903.26, F.S.;
8 revising the circumstances under which a surety bond
9 deposited as bail must be forfeited; revising the
10 circumstances that require a forfeiture to be
11 discharged; amending s. 903.31, F.S.; specifying that
12 certain provisions concerning cancellation of a bond
13 do not apply if the bond is forfeited within a
14 specified period after it has been posted; providing
15 that an original appearance bond does not guarantee
16 placement in a court-ordered program; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 903.045, Florida Statutes, is amended
22 to read:

23 903.045 Nature of criminal surety bail bonds.—It is the
24 public policy of this state and the intent of the Legislature
25 that a criminal surety bail bond, executed by a bail bond agent

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26 licensed pursuant to chapter 648 in connection with the pretrial
27 or appellate release of a criminal defendant, shall be construed
28 as a commitment by and an obligation upon the bail bond agent to
29 ensure that the defendant appears at all ~~subsequent~~ criminal
30 proceedings for which the surety bond is posted and otherwise
31 ~~fulfills all conditions of the bond. The failure of a defendant~~
32 ~~to appear at any subsequent criminal proceeding or the breach by~~
33 ~~the defendant of any other condition of the bond constitutes a~~
34 ~~breach by the bail bond agent of this commitment and obligation.~~

35 Section 2. Subsections (2), (5), (7), and (8) of section
36 903.26, Florida Statutes, are amended to read:

37 903.26 Forfeiture of the bond; when and how directed;
38 discharge; how and when made; effect of payment.—

39 (2) (a) If there is a failure of the defendant to appear as
40 required ~~breach of the bond~~, the court shall declare the bond
41 and any bonds or money deposited as bail forfeited. The clerk of
42 the court shall mail or electronically transmit a notice to the
43 surety agent and surety company within 5 days after the
44 forfeiture. A certificate signed by the clerk of the court or
45 the clerk's designee, certifying that the notice required herein
46 was mailed or electronically transmitted on a specified date and
47 accompanied by a copy of the required notice, shall constitute
48 sufficient proof that such mailing or electronic transmission
49 was properly accomplished as indicated therein. If such mailing
50 or electronic transmission was properly accomplished as

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51 | evidenced by such certificate, the failure of the surety agent,
52 | of a company, or of a defendant to receive such notice shall not
53 | constitute a defense to such forfeiture and shall not be grounds
54 | for discharge, remission, reduction, set aside, or continuance
55 | of such forfeiture. The forfeiture shall be paid within 60 days
56 | after ~~of~~ the date the notice was mailed or electronically
57 | transmitted.

58 | (b) Failure of the defendant to appear at the time, date,
59 | and place of required appearance shall result in forfeiture of
60 | the bond. Such forfeiture shall be automatically entered by the
61 | clerk upon such failure to appear, and the clerk shall follow
62 | the procedures ~~outlined~~ in paragraph (a). However, the court may
63 | determine, in its discretion, in the interest of justice, that
64 | an appearance by the defendant on the same day as required does
65 | not warrant forfeiture of the bond; and the court may direct the
66 | clerk to set aside any such forfeiture which may have been
67 | entered. Any appearance by the defendant later than the required
68 | day constitutes forfeiture of the bond, and the court shall not
69 | preclude entry of such forfeiture by the clerk.

70 | (c) If there is a forfeiture ~~breach~~ of the bond, the clerk
71 | shall provide, upon request, a certified copy of the warrant or
72 | capias to the bail bond agent or surety company.

73 | (5) The court shall discharge a forfeiture within 60 days
74 | upon:

75 | (a) A determination that it was impossible for the

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76 | defendant to appear as required or within 60 days after the date
77 | of the required appearance due to circumstances beyond the
78 | defendant's control. The potential adverse economic consequences
79 | of appearing as required may ~~shall~~ not be considered as
80 | constituting a ground for such a determination;

81 | (b) A determination that, at the time of the required
82 | appearance or within 60 days after the date of the required
83 | appearance, the defendant was ~~adjudicated insane and~~ confined in
84 | an institution or hospital; ~~or~~ was confined in any county,
85 | state, federal, or immigration detention facility; was deported;
86 | or is deceased a jail or prison;

87 | (c) Surrender or arrest of the defendant at the time of
88 | the required appearance or within 60 days after the date of the
89 | required appearance in any county, state, or federal jail or
90 | prison and upon a hold being placed to return the defendant to
91 | the jurisdiction of the court ~~if the delay has not thwarted the~~
92 | ~~proper prosecution of the defendant. If the forfeiture has been~~
93 | ~~before discharge, the court shall direct remission of the~~
94 | ~~forfeiture.~~ The court shall condition a discharge or remission
95 | on the payment of costs and the expenses incurred by an official
96 | in returning the defendant to the jurisdiction of the court; or

97 | (d) A determination that the state is unwilling to seek
98 | extradition of the fugitive defendant within 30 days after a
99 | request by the surety agent to do so, and contingent upon the
100 | surety agent's consent to pay all costs and the expenses

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101 incurred by an official in returning the defendant to the
102 jurisdiction of the court, up to the penal amount of the bond.

103 (7) The payment by a surety of a forfeiture under ~~the~~
104 ~~provisions of~~ this law shall have the same effect on the bond as
105 payment of a judgment.

106 (8) If the defendant is arrested and returned to the
107 county of jurisdiction of the court or has posted a new bond for
108 the case at issue before ~~prior to~~ judgment, the clerk, upon
109 affirmation by the sheriff or the chief correctional officer,
110 shall, without further hearing or order of the court, discharge
111 the forfeiture of the bond. However, if the surety agent fails
112 to pay the costs and expenses incurred in returning the
113 defendant to the county of jurisdiction, the clerk shall not
114 discharge the forfeiture of the bond. If the surety agent and
115 the sheriff fail to agree on the amount of said costs, then the
116 court, after notice to the sheriff and the state attorney, shall
117 determine the amount of the costs.

118 Section 3. Section 903.31, Florida Statutes, is amended to
119 read:

120 903.31 Canceling the bond.—

121 (1) Within 10 business days after the conditions of a bond
122 have been satisfied or the forfeiture discharged or remitted,
123 the court shall order the bond canceled and, if the surety has
124 attached a certificate of cancellation to the original bond, the
125 clerk of the court shall mail or electronically furnish an

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126 | executed certificate of cancellation to the surety without cost.
127 | An adjudication of guilt or innocence ~~or~~ an acquittal, if a
128 | period of 36 months has passed since the original bond was
129 | posted, or a withholding of an adjudication of guilt shall
130 | satisfy the conditions of the bond. The original appearance bond
131 | shall expire 36 months after such bond has been posted for the
132 | release of the defendant from custody. This subsection does not
133 | apply to cases in which a bond has been declared forfeited
134 | before the 36-month expiration.

135 | (2) The original appearance bond does not guarantee a
136 | deferred sentence; sentences, appearance during or after a
137 | presentence investigation;; appearance during or after appeals;;
138 | conduct during or appearance after admission to a pretrial
139 | intervention program; placement in a court-ordered program,
140 | including a residential mental health facility; payment of
141 | fines;; or attendance at educational or rehabilitation
142 | facilities the court otherwise provides in the judgment. If the
143 | original appearance bond has been forfeited or revoked, the bond
144 | shall not be reinstated without approval from the surety on the
145 | original bond.

146 | (3) ~~If In any case where~~ no formal charges are have been
147 | brought against the defendant within 365 days after arrest, the
148 | court shall order the bond canceled unless good cause is shown
149 | by the state.

150 | Section 4. This act shall take effect July 1, 2017.