

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 680

INTRODUCER: Judiciary Committee and Senators Baxley and Garcia

SUBJECT: Bail Bonds

DATE: March 31, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-Meeting</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

**Licensure Requirement**

CS/SB 680 requires licensure pursuant to ch. 648, F.S., for any person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond.

**Discharge of a Forfeiture**

Current law requires a court to discharge the forfeiture of a bail bond within 60 days after the court determines that at the scheduled day and time of the appearance, the defendant did not appear because of circumstances beyond his or her control or because the defendant was adjudicated insane and confined in an institution or hospital or incarcerated.

This bill requires a court to discharge the forfeiture of a bail bond in additional circumstances. Specifically, the bond must be discharged if within 60 days after the scheduled appearance, the defendant is confined in an immigration detention facility, is deported, or is deceased. Further, the bond must be discharged if the defendant becomes incarcerated and the state refuses to seek the extradition of the defendant within 30 days after a surety agent's request if the surety agrees to pay all costs and expenses to return the defendant.

The bill also revises an existing ground in which a court is required to discharge a forfeiture of a bail bond. Under existing law, the forfeiture must be discharged or the proceeds remitted if the defendant surrenders or is arrested. Under the bill, a forfeiture must be discharged only if the surrender or arrest occurs within 60 days after the required court appearance and if a hold is placed on the defendant to return him or her to the court.

### **Remission of a Forfeiture**

Current law also authorizes a bail bond agent to seek the remission or return of all or a portion of the proceeds of a bail bond which has been forfeited to the court. Grounds to seek a remission occur when a defendant surrenders or is apprehended within a certain number of days after forfeiture. Current law grants the court discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on the maximum percentages available under current law.

### **Cancellation of a Bond**

Current law requires the court to order a bail bond cancelled within 10 business days after the conditions of the bond are met. This bill provides that the conditions of the bond are met if the bond has not been declared forfeited within the 36 months since the original bond was posted.

## **II. Present Situation:**

### **Bail**

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bond agent equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release. Bail may also be paid in cash. Cash payments for bail are often times facilitated through a third party vendor who charges a fee to process a credit card or transmit cash for the payment of bail.

### **Determination of Pretrial Release**

Setting bail for a defendant at an initial appearance is a way for the court to ensure the presence of the defendant at subsequent court hearings without keeping him or her incarcerated.<sup>1</sup> This is consistent with the requirements of the Florida Constitution which provide a constitutional right to pretrial release in Art. I, s. 14:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a

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<sup>1</sup> Section 903.011(1), F.S.

crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

However, the court must balance the constitutional right to pretrial release with other considerations:

If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>2</sup>

Therefore, in determining whether to release a defendant on bail and the actual amount of bail, the court must include in its considerations:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear at court proceedings;
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond, and any connection to criminal activity;
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The nature and probability of intimidation and danger to victims;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release; and
- Any other factors relevant to the court.<sup>3</sup>

At the time of determining bail, the court will establish conditions of pretrial release. The court must impose as a condition of pretrial release that the defendant refrain from criminal activity. Also, the court may issue an order of no contact, prohibiting the defendant from having any contact with the victim.<sup>4</sup>

If the court includes a monetary requirement of bail in its order of pretrial release, a registered bail bond agent<sup>5</sup> may satisfy the bail requirement through the posting of a criminal surety bail bond.<sup>6</sup>

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<sup>2</sup> Art. I, s. 14, FLA. CONST. Section 903.046(1), F.S., provides that the purpose of a bail determination is to ensure the appearance of the criminal defendant at subsequent proceedings, while protecting the community from unreasonable danger from the defendant.

<sup>3</sup> Section 903.046(2), F.S.

<sup>4</sup> Section 903.047(1), F.S.

<sup>5</sup> Section 903.045, F.S., provides, in part, "It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent ... shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond."

<sup>6</sup> Section 903.011, F.S.

### **Qualifications as a Bail Bond Agent**

To qualify as a surety, a bail bond agent must:

- Be at least 18 years old and possess a high school diploma or its equivalent;
- Meet citizen or legal alien requirements;
- Have certain ties to the state, including locating the business in the state;
- Provide at least three sworn letters of recommendation from residents of the counties in which the bail bond agent intends to operate;
- Not have been convicted of or plead guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by incarceration in prison; and
- Have passed any required examination.<sup>7</sup>

If the Department of Financial Services (DFS) finds that a person meets the conditions to serve as a bail bond agent, the DFS will issue a license to him or her.<sup>8</sup> To operate in specific counties, a bail bond agent must then register with the sheriff's office and the clerk of the circuit court in the county in which he or she lives, and then apply to other counties, if desired.<sup>9</sup>

### **Forfeiture, Discharge, Remission, and Cancellation of a Bond**

If a defendant on pretrial release fails to appear at a scheduled court appearance, any bond posted is forfeited.<sup>10</sup> If the bond is forfeited, the clerk of the court will mail or electronically send a notice to the bail bond agent within 5 days after forfeiture. The bail bond agent must pay the forfeiture within 60 days of the date the notice was mailed or electronically sent.<sup>11</sup>

However, the court will discharge a forfeiture within 60 days if the court determines that:

- It was impossible for the defendant to appear due to circumstances beyond the defendant's control;
- At the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital, or incarcerated;
- The defendant has surrendered or been arrested, provided that the delay has not compromised the ability of the state to prosecute the defendant.<sup>12</sup>

If the defendant is arrested and returned to the county of jurisdiction prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk must discharge the forfeiture of the bond. However, the bail bond agent must pay the costs and expenses incurred in returning the defendant to the county.<sup>13</sup>

If a court has ordered the forfeiture of a bond and the amount of the forfeiture has been paid to the clerk of court, a bail bond agent may still recoup some or all of the original bond through a remission. If the defendant surrenders or is apprehended within 90 days after forfeiture, the court must direct remission of up to 100 percent of a forfeiture if the bail bond agent apprehended and

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<sup>7</sup> Section 648.34(2), F.S.

<sup>8</sup> Section 648.27(1), F.S.

<sup>9</sup> Section 648.42, F.S.

<sup>10</sup> Section 903.26(2)(b), F.S.

<sup>11</sup> Section 903.26(2)(a), F.S.

<sup>12</sup> Section 903.26(5), F.S.

<sup>13</sup> Section 903.26(8), F.S.

surrendered the defendant or if the bail bond agent substantially procured the return of the defendant.<sup>14</sup> Percentages of up to less than 100 percent of a forfeiture are provided beyond the 90 days after forfeiture, so that if the defendant surrenders or is returned to the county within:

- 180 days after forfeiture, up to 95 percent is remitted;
- 270 days after forfeiture, up to 90 percent is remitted;
- 1 year after forfeiture, up to 85 percent is remitted; or
- 2 years after forfeiture, up to 50 percent is remitted.<sup>15</sup>

The conditions of the bond are met at the time that a case is disposed of by a court entering an order of an adjudication of guilt or innocence, an acquittal, or a withholding of an adjudication of guilt. Within 10 business days after the conditions of a bond are met, or the forfeiture discharged or remitted, the court must order the bond cancelled.<sup>16</sup>

### **Funding of Clerks of Court**

The clerks of court receive funding from a variety of sources. One funding source is the fine and forfeiture fund, which the clerks of the circuit court in each county are to establish for use in “performing court-related functions.”<sup>17</sup> The fine and forfeiture fund also has many funding sources, one of which is the proceeds of forfeited bail bonds.<sup>18</sup>

## **III. Effect of Proposed Changes:**

### **Payment of Bail**

The bill prohibits any person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond unless licensed pursuant to ch. 648, F.S. However, s. 648.27(1), F.S., states a license may only be issued to an individual. A firm, partnership, association, or corporation, as such, may not be licensed. The effect of this conflict would appear to allow only individual bail bondsmen licensed under ch. 648, F.S., to charge a fee for the posting of a cash bond. If the intent is to regulate a corporation, company, or other entity that charges a fee to process a credit card or transmit cash for the payment of bail, such activity might best be regulated under ch. 560, F.S.<sup>19</sup>

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<sup>14</sup> Section 903.28(2), F.S.

<sup>15</sup> Section 903.28, F.S.

<sup>16</sup> Section 903.31(1), F.S.

<sup>17</sup> Section 142.01, F.S.

<sup>18</sup> Section 142.01(1)(d), F.S.

<sup>19</sup> 560.103 Definitions. As used in this chapter, the term:

(22) “Money services business” means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

(23) “Money transmitter” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

### **Discharge of a Forfeiture**

This bill provides additional bases for a court to discharge or release a bail bond agent from the obligation to pay the amount of a forfeited bond to a court. Similarly, the bill provides additional bases for a bail bond agent to seek the remission or return of the proceeds of a forfeited bond from a court. The bill also subjects any person, corporation, or other entity that charges a fee to *facilitate* the release of a defendant awaiting trial through the posting of a cash or surety bail bond to the same licensure requirements as bail bond agents.

Current law requires a court to discharge a forfeiture within 60 days if the court determines that at the scheduled day and time of the appearance:

- Circumstances beyond the defendant's control made it impossible for the defendant to appear;
- The defendant was adjudicated insane and confined in an institution or hospital;
- The defendant was incarcerated; or
- The defendant has surrendered or has been arrested and the delay has not compromised the ability of the state to properly prosecute the defendant.

This bill requires a court to consider the circumstances of the defendant not just on the original scheduled date to appear but also within 60 days after the scheduled appearance. The bill also provides that to qualify for a discharge based on the surrender or arrest of the defendant, surrender or arrest may take place at any county, state, or federal jail or prison, and upon a hold being placed to return the defendant to the county. However, these actions must take place within 60 days after the defendant's required court appearance.

In addition to the increased timeframe, the bill requires the court to order the discharge of a forfeiture if:

- The defendant was confined in a county, state, federal, or immigration detention facility, or was deported;
- The defendant is deceased;
- The defendant posted a new bond in the case; or
- The state is unwilling to seek extradition of a fugitive defendant within 30 days after a bail bond agent requests extradition, provided that the agent agrees to pay all costs and the expenses incurred to return the defendant to the county.

### **Remission of a Forfeiture**

Current law also authorizes a bail bond agent to recoup a bond that has been forfeited through a remission, in instances in which a defendant surrenders or is apprehended within a certain number of days after forfeiture. The court, under current law, has discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on those fixed percentages in existing law. For example, where existing law provides that the court may direct remission of up to, but not more than, 95 percent of a forfeiture, the bill requires the remission of 95 percent of the forfeiture.

### **Cancellation of a Bond**

Current law requires the court to order the bond cancelled within 10 business days after the conditions of a bond are met. This bill provides that the conditions of the bond have also been met if 36 months have passed since the defendant posted the original bond.

The bill also replaces references to a “breach” of a bond, with a “forfeiture” of a bond. By changing the references, courts will be precluded from ordering the forfeiture of a bond if a defendant breaches a condition of pretrial release other than the failure to appear at a criminal proceeding.

The bill takes effect July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Business who charge a fee to facilitate the payment of a cash bond cannot become licensed under ch. 648, F.S., and thus would no longer be allowed to operate.

Bail bond and surety companies will financially benefit from this bill, due to the additional bases authorized for a discharge of a forfeiture, remission of fixed percentages of a forfeiture, and the cancellation of a bond if 36 months have passed from the original posting of the bond. In addition the licensing requirements for those who charge a fee or premium to facilitate the pretrial release of a defendant may reduce competition in the bail bond industry but may also provide other consumer protections.

### C. Government Sector Impact:

To the extent that the bill reduces forfeitures of bail bonds or requires the remission of forfeited amounts, the bill may require the Legislature to provide additional funding to the clerks of court for their court-related functions.<sup>20</sup>

## VI. Technical Deficiencies:

Section 1 of the bill provides that “A person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond must be licensed pursuant to chapter 648.” This language appears to be inconsistent, however, with s. 648.27(1), F.S., which provides “A license may not be issued except ... to an individual. A firm, partnership, association, or corporation, as such, may not be licensed.”

The inconsistency between the bill and existing law about who must be licensed under ch. 648, F.S., should be resolved but how to do so is not clear. Perhaps what constitutes acting as a bail bond agent should be revised in ch. 648, F.S., in lieu of the changes in the bill. Another option might be to provide criteria in ch. 648, F.S., to license corporations and other entities.

Additionally, the effect of the new requirement for licensing those who *facilitate* the release of an incarcerated defendant is unclear. It might regulate a larger class of activities and require licensure of a larger class of individuals than are regulated or licensed under current ch. 648, F.S. Chapter 648, F.S. regulates those who “Charges a fee or premium to release an accused defendant or detainee from jail.”<sup>21</sup> Those who facilitate a person’s release are not expressly addressed in ch. 648, F.S.

## VII. Related Issues:

It is unclear if businesses who charge a fee to process credit cards or transfer cash for the payment of bail currently fall under the licensure requirements of money transmitters<sup>22</sup> under ch. 560, F.S.

Section 215.322, F.S., allows state agencies, the judicial branch, and units of local government, may accept credit cards, charge cards, debit cards, or electronic funds transfers in payment for goods and services. Additionally, section 215.322, F.S., allows state agencies, the judicial branch, and local governments may contract with financial institutions or other appropriate intermediaries to facilitate such payments. There appears to be no requirement that such entities contracted with must be licensed under ch. 560, F.S. However, such contracts must be approved by the Chief Financial Officer who it would appear could choose to impose such a requirement, even though not expressly required in statute.

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<sup>20</sup> See s. 142.01(1)(d), F.S.

<sup>21</sup> Section 648.25(1)(b)1., F.S.

<sup>22</sup> A “money transmitter” is “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.” s. 560.103(23), F.S.



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 903.045, 903.26, 903.28, and 903.31.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 22, 2017:**

The CS provides that to qualify for a discharge of a forfeiture:

- Based on the surrender or arrest of the defendant, the surrender or arrest may be at any county, state, or federal jail or prison, upon a hold being placed to return the defendant to the county; or
- Based on a determination that the state is unwilling to extradite a fugitive defendant, the number of days after which the surety agent requests extradition is increased from 10 to 30 days, and the surety agent must pay all costs and expenses incurred to return the defendant, not just transportation costs.

- B. **Amendments:**

None.