

By the Committee on Judiciary; and Senators Baxley and Garcia

590-02726-17

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1 A bill to be entitled
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 requiring that anyone charging a fee or premium to
7 post a cash or surety bail bond be licensed under
8 specified provisions; deleting a provision relating to
9 circumstances that constitute a breach by the bail
10 bond agent; amending s. 903.26, F.S.; revising the
11 circumstances under which a surety bond deposited as
12 bail must be forfeited; revising the circumstances
13 that require a forfeiture to be discharged; amending
14 s. 903.28, F.S.; revising the amount of forfeiture to
15 be remitted under specified conditions; amending s.
16 903.31, F.S.; specifying that certain provisions
17 concerning cancellation of a bond do not apply if the
18 bond is forfeited within a specified period after it
19 has been posted; providing that an original appearance
20 bond does not guarantee placement in a court-ordered
21 program; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 903.045, Florida Statutes, is amended to
26 read:

27 903.045 Nature of criminal surety bail bonds.—It is the
28 public policy of this state and the intent of the Legislature
29 that a criminal surety bail bond, executed by a bail bond agent

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30 licensed pursuant to chapter 648 in connection with the pretrial
31 or appellate release of a criminal defendant, shall be construed
32 as a commitment by and an obligation upon the bail bond agent to
33 ensure that the defendant appears at all ~~subsequent~~ criminal
34 proceedings for which the surety bond was posted. A person,
35 corporation, company, or other entity that charges a fee or
36 premium to facilitate the release of an accused defendant from
37 jail through the posting of a cash or surety bail bond must be
38 licensed pursuant to chapter 648 ~~and otherwise fulfills all~~
39 ~~conditions of the bond. The failure of a defendant to appear at~~
40 ~~any subsequent criminal proceeding or the breach by the~~
41 ~~defendant of any other condition of the bond constitutes a~~
42 ~~breach by the bail bond agent of this commitment and obligation.~~

43 Section 2. Subsections (2), (5), (6), (7), and (8) of
44 section 903.26, Florida Statutes, are amended to read:

45 903.26 Forfeiture of the bond; when and how directed;
46 discharge; how and when made; effect of payment.—

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

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59 evidenced by such certificate, the failure of the surety agent,
60 of a company, or of a defendant to receive such notice shall not
61 constitute a defense to such forfeiture and shall not be grounds
62 for discharge, remission, reduction, set aside, or continuance
63 of such forfeiture. The forfeiture shall be paid within 60 days
64 after ~~of~~ the date the notice was mailed or electronically
65 transmitted.

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

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

81 (5) The court shall discharge a forfeiture within 60 days
82 upon:

83 (a) A determination that it was impossible for the
84 defendant to appear as required or within 60 days after the date
85 of the required appearance due to circumstances beyond the
86 defendant's control. The potential adverse economic consequences
87 of appearing as required may ~~shall~~ not be considered as

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88 constituting a ground for such a determination;

89 (b) A determination that, at the time of the required
90 appearance or within 60 days after the date of the required
91 appearance, the defendant was ~~adjudicated insane and~~ confined in
92 an institution or hospital; ~~or~~ was confined in any county,
93 state, federal, or immigration detention facility; was deported;
94 or is deceased a jail or prison;

95 (c) Surrender or arrest of the defendant at the time of the
96 required appearance or within 60 days after the date of the
97 required appearance in any county, state, or federal jail or
98 prison and upon a hold being placed to return the defendant to
99 the jurisdiction of the court if the delay has not thwarted the
100 proper prosecution of the defendant. If the forfeiture has been
101 before discharge, the court shall direct remission of the
102 forfeiture. The court shall condition a discharge or remission
103 on the payment of costs and the expenses incurred by an official
104 in returning the defendant to the jurisdiction of the court; or

105 (d) A determination that the state is unwilling to seek
106 extradition of the fugitive defendant within 30 days after a
107 request by the surety agent to do so, and contingent upon the
108 surety agent's consent to pay all costs and the expenses
109 incurred by an official in returning the defendant to the
110 jurisdiction of the court, up to the penal amount of the bond.

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

113 ~~(6)(7)~~ The payment by a surety of a forfeiture under ~~the~~
114 ~~provisions of~~ this law shall have the same effect on the bond as
115 payment of a judgment.

116 ~~(7)(8)~~ If the defendant is arrested and returned to the

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117 county of jurisdiction of the court or has posted a new bond for
118 the case at issue before ~~prior to~~ judgment, the clerk, upon
119 affirmation by the sheriff or the chief correctional officer,
120 shall, without further hearing or order of the court, discharge
121 the forfeiture of the bond. However, if the surety agent fails
122 to pay the costs and expenses incurred in returning the
123 defendant to the county of jurisdiction, the clerk shall not
124 discharge the forfeiture of the bond. If the surety agent and
125 the sheriff fail to agree on the amount of said costs, then the
126 court, after notice to the sheriff and the state attorney, shall
127 determine the amount of the costs.

128 Section 3. Subsections (2), (3), (4), (5), and (6) of
129 section 903.28, Florida Statutes, are amended to read:

130 903.28 Remission of forfeiture; conditions.-

131 (2) If the defendant surrenders or is apprehended within 90
132 days after forfeiture, the court, on motion at a hearing upon
133 notice having been given to the clerk of the circuit court and
134 the state attorney as required in subsection (8), shall direct
135 remission of ~~up to, but not more than,~~ 100 percent of a
136 forfeiture if the surety apprehended and surrendered the
137 defendant or if the apprehension or surrender of the defendant
138 was substantially procured or caused by the surety, or the
139 surety has substantially attempted to procure or cause the
140 apprehension or surrender of the defendant, and the delay has
141 not thwarted the proper prosecution of the defendant. In
142 addition, remission shall be granted when the surety did not
143 substantially participate or attempt to participate in the
144 apprehension or surrender of the defendant when the costs of
145 returning the defendant to the jurisdiction of the court have

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146 been deducted from the remission and when the delay has not
147 thwarted the proper prosecution of the defendant.

148 (3) If the defendant surrenders or is apprehended within
149 180 days after forfeiture, the court, on motion at a hearing
150 upon notice having been given to the clerk of the circuit court
151 and the state attorney as required in subsection (8), shall
152 direct remission of ~~up to, but not more than,~~ 95 percent of a
153 forfeiture if the surety apprehended and surrendered the
154 defendant or if the apprehension or surrender of the defendant
155 was substantially procured or caused by the surety, or the
156 surety has substantially attempted to procure or cause the
157 apprehension or surrender of the defendant, and the delay has
158 not thwarted the proper prosecution of the defendant. In
159 addition, remission shall be granted when the surety did not
160 substantially participate or attempt to participate in the
161 apprehension or surrender of the defendant when the costs of
162 returning the defendant to the jurisdiction of the court have
163 been deducted from the remission and when the delay has not
164 thwarted the proper prosecution of the defendant.

165 (4) If the defendant surrenders or is apprehended within
166 270 days after forfeiture, the court, on motion at a hearing
167 upon notice having been given to the clerk of the circuit court
168 and the state attorney as required in subsection (8), shall
169 direct remission of ~~up to, but not more than,~~ 90 percent of a
170 forfeiture if the surety apprehended and surrendered the
171 defendant or if the apprehension or surrender of the defendant
172 was substantially procured or caused by the surety, or the
173 surety has substantially attempted to procure or cause the
174 apprehension or surrender of the defendant, and the delay has

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175 not thwarted the proper prosecution of the defendant. In
176 addition, remission shall be granted when the surety did not
177 substantially participate or attempt to participate in the
178 apprehension or surrender of the defendant when the costs of
179 returning the defendant to the jurisdiction of the court have
180 been deducted from the remission and when the delay has not
181 thwarted the proper prosecution of the defendant.

182 (5) If the defendant surrenders or is apprehended within 1
183 year after forfeiture, the court, on motion at a hearing upon
184 notice having been given to the clerk of the circuit court and
185 the state attorney as required in subsection (8), shall direct
186 remission of ~~up to, but not more than,~~ 85 percent of a
187 forfeiture if the surety apprehended and surrendered the
188 defendant or if the apprehension or surrender of the defendant
189 was substantially procured or caused by the surety, or the
190 surety has substantially attempted to procure or cause the
191 apprehension or surrender of the defendant, and the delay has
192 not thwarted the proper prosecution of the defendant. In
193 addition, remission shall be granted when the surety did not
194 substantially participate or attempt to participate in the
195 apprehension or surrender of the defendant when the costs of
196 returning the defendant to the jurisdiction of the court have
197 been deducted from the remission and when the delay has not
198 thwarted the proper prosecution of the defendant.

199 (6) If the defendant surrenders or is apprehended within 2
200 years after forfeiture, the court, on motion at a hearing upon
201 notice having been given to the clerk of the circuit court and
202 the state attorney as required in subsection (8), shall direct
203 remission of ~~up to, but not more than,~~ 50 percent of a

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204 forfeiture if the surety apprehended and surrendered the
205 defendant or if the apprehension or surrender of the defendant
206 was substantially procured or caused by the surety, or the
207 surety has substantially attempted to procure or cause the
208 apprehension or surrender of the defendant, and the delay has
209 not thwarted the proper prosecution of the defendant. In
210 addition, remission shall be granted when the surety did not
211 substantially participate or attempt to participate in the
212 apprehension or surrender of the defendant when the costs of
213 returning the defendant to the jurisdiction of the court have
214 been deducted from the remission and when the delay has not
215 thwarted the proper prosecution of the defendant.

216 Section 4. Section 903.31, Florida Statutes, is amended to
217 read:

218 903.31 Canceling the bond.—

219 (1) Within 10 business days after the conditions of a bond
220 have been satisfied or the forfeiture discharged or remitted,
221 the court shall order the bond canceled and, if the surety has
222 attached a certificate of cancellation to the original bond, the
223 clerk of the court shall mail or electronically furnish an
224 executed certificate of cancellation to the surety without cost.
225 An adjudication of guilt or innocence ~~or~~ an acquittal, if a
226 period of 36 months has passed since the original bond was
227 posted, or a withholding of an adjudication of guilt shall
228 satisfy the conditions of the bond. The original appearance bond
229 shall expire 36 months after such bond has been posted for the
230 release of the defendant from custody. This subsection does not
231 apply to cases in which a bond has been declared forfeited
232 before the 36-month expiration.

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233 (2) The original appearance bond does not guarantee a
234 deferred sentence; ~~sentences~~, appearance during or after a
235 presentence investigation; ~~appearance during or after appeals~~;
236 conduct during or appearance after admission to a pretrial
237 intervention program; placement in a court-ordered program,
238 including a residential mental health facility; ~~payment of~~
239 fines; ~~or attendance at educational or rehabilitation~~
240 facilities the court otherwise provides in the judgment. If the
241 original appearance bond has been forfeited or revoked, the bond
242 shall not be reinstated without approval from the surety on the
243 original bond.

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

248 Section 5. This act shall take effect July 1, 2017.