

By the Committees on Banking and Insurance; and Judiciary; and Senators Baxley and Garcia

597-03356-17

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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 prohibiting a person or entity that charges a fee for
7 facilitating the release of a defendant through the
8 posting of a cash bond from using the term "bail" in
9 advertisements and printed materials posted in a jail;
10 requiring a certain disclaimer in such materials;
11 deleting a provision relating to circumstances that
12 constitute a breach by the bail bond agent; amending
13 s. 903.26, F.S.; revising the circumstances under
14 which a surety bond deposited as bail must be
15 forfeited; revising the circumstances that require a
16 forfeiture to be discharged; amending s. 903.28, F.S.;
17 revising the amount of forfeiture to be remitted under
18 specified conditions; amending s. 903.31, F.S.;
19 specifying that certain provisions concerning
20 cancellation of a bond do not apply if the bond is
21 forfeited within a specified period after it has been
22 posted; providing that an original appearance bond
23 does not guarantee placement in a court-ordered
24 program; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 903.045, Florida Statutes, is amended to
29 read:

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30 903.045 Nature of criminal surety bail bonds.—It is the
31 public policy of this state and the intent of the Legislature
32 that a criminal surety bail bond, executed by a bail bond agent
33 licensed pursuant to chapter 648 in connection with the pretrial
34 or appellate release of a criminal defendant, shall be construed
35 as a commitment by and an obligation upon the bail bond agent to
36 ensure that the defendant appears at all ~~subsequent~~ criminal
37 proceedings for which the surety bond is posted. A person not
38 licensed under chapter 648, a corporation, company, or other
39 entity that charges a fee to facilitate the release of an
40 accused defendant from jail through the posting of a cash bond
41 may not use the term "bail" in any advertisement for such
42 services or in any of its printed materials posted in a jail,
43 and any such materials must include a disclaimer stating that
44 the service is not to facilitate a surety bail bond and
45 ~~otherwise fulfills all conditions of the bond. The failure of a~~
46 ~~defendant to appear at any subsequent criminal proceeding or the~~
47 ~~breach by the defendant of any other condition of the bond~~
48 ~~constitutes a breach by the bail bond agent of this commitment~~
49 ~~and obligation.~~

50 Section 2. Subsections (2), (5), (7), and (8) of section
51 903.26, Florida Statutes, are amended to read:

52 903.26 Forfeiture of the bond; when and how directed;
53 discharge; how and when made; effect of payment.—

54 (2) (a) If there is a failure of the defendant to appear as
55 required ~~breach of the bond~~, the court shall declare the bond
56 and any bonds or money deposited as bail forfeited. The clerk of
57 the court shall mail or electronically transmit a notice to the
58 surety agent and surety company within 5 days after the

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59 forfeiture. A certificate signed by the clerk of the court or
60 the clerk's designee, certifying that the notice required herein
61 was mailed or electronically transmitted on a specified date and
62 accompanied by a copy of the required notice, shall constitute
63 sufficient proof that such mailing or electronic transmission
64 was properly accomplished as indicated therein. If such mailing
65 or electronic transmission was properly accomplished as
66 evidenced by such certificate, the failure of the surety agent,
67 of a company, or of a defendant to receive such notice shall not
68 constitute a defense to such forfeiture and shall not be grounds
69 for discharge, remission, reduction, set aside, or continuance
70 of such forfeiture. The forfeiture shall be paid within 60 days
71 after ~~of~~ the date the notice was mailed or electronically
72 transmitted.

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

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

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88 (5) The court shall discharge a forfeiture within 60 days
89 upon:

90 (a) A determination that it was impossible for the
91 defendant to appear as required or within 60 days after the date
92 of the required appearance due to circumstances beyond the
93 defendant's control. The potential adverse economic consequences
94 of appearing as required may shall not be considered as
95 constituting a ground for such a determination;

96 (b) A determination that, at the time of the required
97 appearance or within 60 days after the date of the required
98 appearance, the defendant was ~~adjudicated insane and~~ confined in
99 an institution or hospital; ~~or~~ was confined in any county,
100 state, federal, or immigration detention facility; was deported;
101 or is deceased a jail or prison;

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

112 (d) A determination that the state is unwilling to seek
113 extradition of the fugitive defendant within 30 days after a
114 request by the surety agent to do so, and contingent upon the
115 surety agent's consent to pay all costs and the expenses
116 incurred by an official in returning the defendant to the

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117 jurisdiction of the court, up to the penal amount of the bond.

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

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

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

135 903.28 Remission of forfeiture; conditions.—

136 (2) If the defendant surrenders or is apprehended within 90
137 days after forfeiture, the court, on motion at a hearing upon
138 notice having been given to the clerk of the circuit court and
139 the state attorney as required in subsection (8), shall direct
140 remission of ~~up to, but not more than,~~ 100 percent of a
141 forfeiture if the surety apprehended and surrendered the
142 defendant or if the apprehension or surrender of the defendant
143 was substantially procured or caused by the surety, or the
144 surety has substantially attempted to procure or cause the
145 apprehension or surrender of the defendant, and the delay has

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146 not thwarted the proper prosecution of the defendant. In
147 addition, remission shall be granted when the surety did not
148 substantially participate or attempt to participate in the
149 apprehension or surrender of the defendant when the costs of
150 returning the defendant to the jurisdiction of the court have
151 been deducted from the remission and when the delay has not
152 thwarted the proper prosecution of the defendant.

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

170 (4) If the defendant surrenders or is apprehended within
171 270 days after forfeiture, the court, on motion at a hearing
172 upon notice having been given to the clerk of the circuit court
173 and the state attorney as required in subsection (8), shall
174 direct remission of ~~up to, but not more than,~~ 90 percent of a

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175 forfeiture if the surety apprehended and surrendered the
176 defendant or if the apprehension or surrender of the defendant
177 was substantially procured or caused by the surety, or the
178 surety has substantially attempted to procure or cause the
179 apprehension or surrender of the defendant, and the delay has
180 not thwarted the proper prosecution of the defendant. In
181 addition, remission shall be granted when the surety did not
182 substantially participate or attempt to participate in the
183 apprehension or surrender of the defendant when the costs of
184 returning the defendant to the jurisdiction of the court have
185 been deducted from the remission and when the delay has not
186 thwarted the proper prosecution of the defendant.

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

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204 (6) If the defendant surrenders or is apprehended within 2
205 years after forfeiture, the court, on motion at a hearing upon
206 notice having been given to the clerk of the circuit court and
207 the state attorney as required in subsection (8), shall direct
208 remission of ~~up to, but not more than,~~ 50 percent of a
209 forfeiture if the surety apprehended and surrendered the
210 defendant or if the apprehension or surrender of the defendant
211 was substantially procured or caused by the surety, or the
212 surety has substantially attempted to procure or cause the
213 apprehension or surrender of the defendant, and the delay has
214 not thwarted the proper prosecution of the defendant. In
215 addition, remission shall be granted when the surety did not
216 substantially participate or attempt to participate in the
217 apprehension or surrender of the defendant when the costs of
218 returning the defendant to the jurisdiction of the court have
219 been deducted from the remission and when the delay has not
220 thwarted the proper prosecution of the defendant.

221 Section 4. Section 903.31, Florida Statutes, is amended to
222 read:

223 903.31 Canceling the bond.—

224 (1) Within 10 business days after the conditions of a bond
225 have been satisfied or the forfeiture discharged or remitted,
226 the court shall order the bond canceled and, if the surety has
227 attached a certificate of cancellation to the original bond, the
228 clerk of the court shall mail or electronically furnish an
229 executed certificate of cancellation to the surety without cost.
230 An adjudication of guilt or innocence or, an acquittal, if a
231 period of 36 months has passed since the original bond was
232 posted, or a withholding of an adjudication of guilt shall

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233 satisfy the conditions of the bond. The original appearance bond
234 shall expire 36 months after such bond has been posted for the
235 release of the defendant from custody. This subsection does not
236 apply to cases in which a bond has been declared forfeited
237 before the 36-month expiration.

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

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

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