

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 680

INTRODUCER: Banking and Insurance Committee; Judiciary Committee; and Senators Baxley and Garcia

SUBJECT: Bail Bonds

DATE: April 14, 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>Fav/CS</u>
3.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 680 amends several provisions related to bail. Under the bill, a bond is a commitment by the bail bond agent to ensure that the defendant appears at all criminal proceedings *for which the surety bond is posted*.

Bail Advertising in Jail

The bill prohibits any person or entity that charges a fee for facilitating the release of a defendant through the posting of a *cash bond* from using the term “bail” in any advertisement for services or in any of the printed materials posted in a jail. Such advertisements or printed materials must disclose that the services do not facilitate a *surety bail bond*.

Forfeiture and Discharge of a Bond

This bill creates additional circumstances under which a court must discharge the forfeiture of a bail bond and amends circumstances currently provided in law. Specifically, the additional circumstances include that 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; and 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 agent agrees to pay all costs and expenses to return the defendant.

The bill 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 Bond

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 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.

The fiscal impact of the bill is indeterminate at this time. The provisions of the bill may have a negative impact on fees collected by the clerks of court related to criminal surety bail bonds. See Section V. Fiscal Impact Statement.

II. Present Situation:

Bail

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond, that he or she will return for trial and any other required court appearances.¹ As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond² executed by a bail bond agent. Generally, the defendant pays the bail bond agent a nonrefundable fee 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.³ This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release.

¹ "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges. *Universal Bail Bonds v. State*, 929 So. 2d 697, 699 (Fla. 3d DCA 2006).

² Sections 903.011 and 903.105, F.S.

³ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2015*, Report No. 16-10 (Dec. 2016), at 2.

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.⁴ 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 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.⁵

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 of such funds 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.⁶

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.

⁴ Section 903.011(1), F.S.

⁵ 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 defendant at subsequent proceedings, while protecting the community from unreasonable danger from the defendant.

⁶ Section 903.046(2), F.S.

Also, the court may issue an order of no contact, prohibiting the defendant from having any contact with the victim.⁷

If the court includes a monetary requirement of bail in its order of pretrial release, a registered bail bond agent⁸ may satisfy the bail requirement through the posting of a criminal surety bail bond.⁹

Qualifications as a Bail Bond Agent

To qualify as a bail bond agent, a person 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 person 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.¹⁰

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.¹¹ To operate, a bail bond agent must register with the sheriff's office and the clerk of the circuit court in the county in which he or she lives, and then may register in the same manner in any other county in which he or she desires to operate.¹²

Bail Advertising in Jails

A bail bond agent licensed under ch. 648, F.S., is prohibited from directly or indirectly soliciting business in or on the grounds of a jail, prison, or other place where prisoners are confined, or in or on the grounds of any court.¹³ A bail bond agent is allowed to post print advertising in a jail, but such advertising is "strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail."¹⁴ A finding by the DFS that the bail bond agent has failed to comply with the solicitation requirements can be subject to a fine of \$5,000 for each act of improper solicitation.¹⁵

⁷ Section 903.047(1), F.S.

⁸ 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."

⁹ Section 903.011, F.S.

¹⁰ Section 648.34(2), F.S.

¹¹ Section 648.27, F.S.

¹² Section 648.42, F.S.

¹³ Section 648.44(1)(b), F.S. "The term "solicitation" includes the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor."

¹⁴ *Id.*

¹⁵ Section 648.525, F.S.

Additionally, a bail bond agency is prohibited from advertising or holding itself out to be a bail bond or surety company.¹⁶

Forfeiture, Discharge, Remission, and Cancellation of a Bond

Forfeiture and Discharge of a Bond

If a defendant on pretrial release fails to appear at a scheduled court appearance or breaches a bond in anyway, any bond posted is forfeited.¹⁷ 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.¹⁸

However, the court will discharge a forfeiture within 60 days of:

- Determining that it was impossible for the defendant to appear due to circumstances beyond the defendant's control.
- Determining that, at the time of the required appearance, the defendant was:
 - Adjudicated insane and confined in an institution or hospital; or
 - Incarcerated.
- The defendant surrendering or being arrested, if the delay has not compromised the ability of the state to prosecute the defendant.¹⁹

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 of the court 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.²⁰

Remission of a Bond

If a court has ordered the forfeiture of a bond and the amount of the forfeiture has been paid to the clerk of the 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 surrendered the defendant or if the bail bond agent substantially procured the return of the defendant.²¹ Percentages of up to less than 100 percent of a forfeiture are provided beyond 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.²²

¹⁶ Section 648.44(6), F.S.

¹⁷ Section 903.26(2)(b), F.S. Forfeiture means that the conditions of the bond were "breached."

¹⁸ Section 903.26(2)(a), F.S.

¹⁹ Section 903.26(5), F.S.

²⁰ Section 903.26(8), F.S.

²¹ Section 903.28(2), F.S.

²² Section 903.28, F.S.

Cancellation of a Bond

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.²³

III. Effect of Proposed Changes:

Bail Advertising in Jails (Section 1, amending s. 903.045, F.S.)

The bill prohibits any person not a licensed bail bond agent pursuant to ch. 648, F.S., a corporation, company, or other entity that charges a fee or premium to facilitate the release of a defendant from jail through the posting of a *cash bond* from using the term “bail” in any advertisements or printed materials posted in a jail. Such advertisements or printed materials must disclose that the services do not facilitate a *surety bail bond*.

The bill also amends this section to state that the bond is a commitment by the bail bond agent to ensure that the defendant appears at all criminal proceedings *for which the surety bond is posted*. This limits the obligation of the bail bond agent to “ensuring the defendant appears at the criminal proceedings related directly to the surety bond that was posted. It would not apply to other charges against the defendant that had a different surety bond posted for the charges.”²⁴

Forfeiture, Discharge, Remission, and Cancellation of a Bond

Forfeiture and Discharge of a Bond (Section 2, amending s. 903.26, F.S.)

This bill provides additional grounds 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.

As discussed above in the Present Situation, current law requires a court to discharge a forfeiture within 60 days of:

- Determining that circumstances beyond the defendant’s control made it impossible for the defendant to appear.
- Determining that, at the time of the required appearance, the defendant was:
 - Adjudicated insane and confined in an institution or hospital; or
 - Incarcerated.
- The defendant surrendering or being arrested, if the delay has not compromised the ability of the state to prosecute the defendant.

The bill requires a court to discharge a forfeiture within 60 days of:

- Determining that circumstances beyond the defendant’s control made it impossible for the defendant to appear *not just on the original required date to appear but also within 60 days after the required appearance*.

²³ Section 903.31(1), F.S.

²⁴ Department of Financial Services, *2017 Agency Bill Analysis HB 361*, February 19, 2017.

- Determining that, at the time of the required appearance *or within 60 days after the required appearance*, the defendant was:
 - Confined in an institution or hospital;²⁵
 - *Incarcerated in any county, state, or federal, or immigration detention facility;*
 - *Deported;* or
 - *Deceased.*
- The defendant surrendering or being arrested *on the original required date to appear or within 60 days after the required appearance in any county, state, or federal jail or prison, and a hold being placed to return the defendant to the jurisdiction of the court.*
- *Determining that 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, up to the penal amount of the bond.*

Additionally, the bill provides that *if the defendant posts a new bond for the case at issue* prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk of the court must discharge the forfeiture of the bond. Under the bill, the clerk of the court shall discharge the bond without further *hearing* or order by the court if the defendant posts a new bond or the defendant is arrested and returned to the county.

The bill also replaces references to a “breach” of a bond with a “forfeiture” of a bond, and states instead that if there is a “failure of the defendant to appear as required” instead of a “breach of the bond,” then the court will declare the bond forfeited. 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 as required.

Remission of a Bond (Section 3, amending s. 903.28, F.S.)

As discussed above in the Present Situation, current law 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 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. If the defendant surrenders or is apprehended within:

- 90 days after forfeiture, 100 percent is remitted;
- 180 days after forfeiture, 95 percent is remitted;
- 270 days after forfeiture, 90 percent is remitted;
- 1 year after forfeiture, 85 percent is remitted; or
- 2 years after forfeiture, 50 percent is remitted.

²⁵ The bill removes the requirement that the person be adjudicated insane.

Cancellation of a Bond (Section 4, amending s. 903.31, F.S.)

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 been met if 36 months have passed since the defendant posted the original bond.

The bill also provides that the original appearance bond does not guarantee placement in a court-ordered program, including a residential mental health facility. Current law states that the original appearance bond does not guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in a judgment.

Effective Date

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:

Bail bond and surety companies will financially benefit from this bill, due to the additional grounds 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.

C. Government Sector Impact:

The clerks of court receive funding from a variety of sources, including the fine and forfeiture fund, which the clerk of the circuit court in each county is required to establish

for use in “performing court-related functions.”²⁶ The fine and forfeiture fund has many funding sources, one of which is the proceeds of forfeited bail bonds.²⁷

To the extent that the bill reduces forfeitures of bail bonds or requires the remission of forfeited amounts, the bill may reduce the funding of the clerks of court for their court-related functions.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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/CS by Banking and Insurance on April 3, 2017:

The committee substitute:

- Prohibits any person not licensed pursuant to ch. 648, F.S., a 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 bail bond, from using the term “bail” in any advertisements or printed materials posted in a jail. Such advertisements and printed materials must disclose their services do not facilitate a surety bail bond.
- Does not require 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 to be licensed under ch. 648, F.S.
- Does not repeal s. 903.26(6), F.S., which states: “The discharge of a forfeiture shall not be ordered for any reason other than as specified herein.”

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

²⁶ Section 142.01, F.S.

²⁷ Section 142.01(1)(d), F.S.

²⁸ See s. 142.01(1)(d), F.S.

- 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.