

By Senator Baxley

12-00670-17

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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; requiring that
5 anyone charging a fee or premium to post a cash or
6 surety bail bond must be licensed under specified
7 provisions; amending s. 903.26, F.S.; specifying that
8 a defendant's failure to appear before the court in a
9 proceeding for which the surety bond was posted
10 requires the bond and any bonds or money deposited as
11 bail to be forfeited; revising the circumstances that
12 require a forfeiture to be discharged; amending s.
13 903.28, F.S.; clarifying the amount of forfeiture to
14 be remitted under different specified conditions;
15 amending s. 903.31, F.S.; specifying that certain
16 provisions concerning the cancellation of a bond do
17 not apply if the bond is forfeited within a specified
18 period after it has been posted; providing that an
19 original appearance bond does not guarantee placement
20 in a court-ordered program; providing an effective
21 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
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

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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
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

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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
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

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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 if the delay has
96 not thwarted the proper prosecution of the defendant. If the
97 forfeiture has been before discharge, the court shall direct
98 remission of the forfeiture. The court shall condition a
99 discharge or remission on the payment of costs and the expenses
100 incurred by an official in returning the defendant to the
101 jurisdiction of the court; or

102 (d) A determination that the state is unwilling to seek
103 extradition of the fugitive defendant within 10 days after a
104 request by the surety to do so, and contingent upon the surety
105 agent's consent to pay all transportation costs incurred by an
106 official in returning the defendant to the jurisdiction of the
107 court, up to the penal amount of the bond.

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

110 ~~(6)(7)~~ The payment by a surety of a forfeiture under ~~the~~
111 ~~provisions of~~ this law shall have the same effect on the bond as
112 payment of a judgment.

113 ~~(7)(8)~~ If the defendant is arrested and returned to the
114 county of jurisdiction of the court or has posted a new bond for
115 the case at issue before ~~prior to~~ judgment, the clerk, upon
116 affirmation by the sheriff or the chief correctional officer,
117 shall, without further hearing or order of the court, discharge
118 the forfeiture of the bond. However, if the surety agent fails
119 to pay the costs and expenses incurred in returning the

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120 defendant to the county of jurisdiction, the clerk shall not
121 discharge the forfeiture of the bond. If the surety agent and
122 the sheriff fail to agree on the amount of said costs, then the
123 court, after notice to the sheriff and the state attorney, shall
124 determine the amount of the costs.

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

127 903.28 Remission of forfeiture; conditions.—

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

145 (3) If the defendant surrenders or is apprehended within
146 180 days after forfeiture, the court, on motion at a hearing
147 upon notice having been given to the clerk of the circuit court
148 and the state attorney as required in subsection (8), shall

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149 direct remission of ~~up to, but not more than,~~ 95 percent of a
150 forfeiture if the surety apprehended and surrendered the
151 defendant or if the apprehension or surrender of the defendant
152 was substantially procured or caused by the surety, or the
153 surety has substantially attempted to procure or cause the
154 apprehension or surrender of the defendant, and the delay has
155 not thwarted the proper prosecution of the defendant. In
156 addition, remission shall be granted when the surety did not
157 substantially participate or attempt to participate in the
158 apprehension or surrender of the defendant when the costs of
159 returning the defendant to the jurisdiction of the court have
160 been deducted from the remission and when the delay has not
161 thwarted the proper prosecution of the defendant.

162 (4) If the defendant surrenders or is apprehended within
163 270 days after forfeiture, the court, on motion at a hearing
164 upon notice having been given to the clerk of the circuit court
165 and the state attorney as required in subsection (8), shall
166 direct remission of ~~up to, but not more than,~~ 90 percent of a
167 forfeiture if the surety apprehended and surrendered the
168 defendant or if the apprehension or surrender of the defendant
169 was substantially procured or caused by the surety, or the
170 surety has substantially attempted to procure or cause the
171 apprehension or surrender of the defendant, and the delay has
172 not thwarted the proper prosecution of the defendant. In
173 addition, remission shall be granted when the surety did not
174 substantially participate or attempt to participate in the
175 apprehension or surrender of the defendant when the costs of
176 returning the defendant to the jurisdiction of the court have
177 been deducted from the remission and when the delay has not

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178 thwarted the proper prosecution of the defendant.

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

196 (6) If the defendant surrenders or is apprehended within 2
197 years after forfeiture, the court, on motion at a hearing upon
198 notice having been given to the clerk of the circuit court and
199 the state attorney as required in subsection (8), shall direct
200 remission of ~~up to, but not more than,~~ 50 percent of a
201 forfeiture if the surety apprehended and surrendered the
202 defendant or if the apprehension or surrender of the defendant
203 was substantially procured or caused by the surety, or the
204 surety has substantially attempted to procure or cause the
205 apprehension or surrender of the defendant, and the delay has
206 not thwarted the proper prosecution of the defendant. In

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207 addition, remission shall be granted when the surety did not
208 substantially participate or attempt to participate in the
209 apprehension or surrender of the defendant when the costs of
210 returning the defendant to the jurisdiction of the court have
211 been deducted from the remission and when the delay has not
212 thwarted the proper prosecution of the defendant.

213 Section 4. Section 903.31, Florida Statutes, is amended to
214 read:

215 903.31 Canceling the bond.—

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

230 (2) The original appearance bond does not guarantee a
231 deferred sentence; ~~sentences;~~ appearance during or after a
232 presentence investigation;~~;~~ appearance during or after appeals;~~;~~
233 conduct during or appearance after admission to a pretrial
234 intervention program;~~;~~ placement in a court-ordered program,
235 including a residential mental health facility; payment of

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236 fines;r or attendance at educational or rehabilitation
237 facilities the court otherwise provides in the judgment. If the
238 original appearance bond has been forfeited or revoked, the bond
239 shall not be reinstated without approval from the surety on the
240 original bond.

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

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