

STORAGE NAME: h0717a.in

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 717

RELATING TO: Bail bonds

SPONSOR(S): Representative Crow

COMPANION BILL(S): SB 1516 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) CORRECTIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

A bail bond is a form of security provided to the court to ensure that a defendant will appear for judicial proceedings. Under Florida law, bail bond agents are usually "limited surety agents" but they may also be "professional bail bond agents" which are persons who pledge money, postal money orders, or cashiers checks as security for a bail bond. Bail bond agents are regulated under Chapter 648, F.S., by the Department of Insurance. Statutes relating to the practice of bail bonding are located in Chapter 903, F.S.

This bill would modify the continuing education requirements of Chapter 648, F.S., so that bail bond agents need only complete 7 hours of continuing education every year, as opposed to 14 hours every 2 years. The bill would also require supervising instructors to be present at all continuing education classes.

This bill would also revise various provisions in Chapter 903, F.S. For example, the bill would:

- require that all persons providing information relating to a bail application be subject to accuracy and truthfulness requirements;
- extend the time frame within which the court can discharge a forfeiture of a bail bond -- which also would extend the time before a court could enter a judgment against a bail bond agent;
- require the court to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction prior to judgment;
- reduce the time frame after a judgment within which a bail bond agent can pay the judgment;
- remove the 2 year limit on orders of remission of forfeiture; and
- provide that original appearance bonds expire 36 months after the date the bond is posted.

To the extent the bill alters the amount of money taken in by counties from bail bond forfeitures, the bill would have a indeterminate fiscal impact on local government.

Amendments

On March 29, 1999, the Committee on Insurance adopted a strike-everything amendment to the bill. See section VI of the analysis for a discussion of the strike-everything amendment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Bail Bond Agents

Chapter 648, F.S., provides for the licensing and regulation by the Department of Insurance of bail bond agents and for the regulation of the business of issuing bail bonds. The bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court. According to Florida law, a "bail bond agent" is: (1) a limited surety agent of a surety company or (2) a professional bail bond agent, which is any person who pledges money, cashiers checks, or postal money orders as security for a bail bond.

Part of the licensure requirements for bail bond agents are continuing education requirements. Section 648.385, F.S, requires bail bond agents to have 14 hours of continuing education courses every two years. This section also allows the Department of Insurance to grant, for good cause shown, extensions of up to a year in order to complete the continuing education requirements.

The Department of Insurance also oversees continuing education for health, property, casualty, title, and life agents as well as for workers' compensation adjusters. The Department of Insurance contracts with a private vendor for the purpose of tracking course completions for all of the different continuing education requirements for all of these licensees. Based on the compiled course information, this tracking system also determines compliance for each of the separate continuing education requirements and enables the Department to establish a database for enforcement purposes.

Section 648.386, F.S., regulates the prelicensing and continuing education schools relating to bail bond agents. Section 648.386(4)(a)1.-6., F.S., requires all courses to have a supervising instructor, approved by the Department of Insurance, who is responsible for:

- all course instructors,
- guest lecturers,
- course outlines and curriculum,
- certification of the bail bond agent,
- completion of all required forms, and
- assuring that the course is approved.

Section 648.386(2)(c), F.S., also provides that continuing education schools must offer continuing education classes which are comprised of a minimum of 2 hours of approved coursework and are "taught by an approved supervising instructor." The Department of Insurance has interpreted this section to mean that continuing education courses cannot be "taught" by guest lecturers -- but instead must actually be "taught" by the supervising instructor. As such, bail bond agents are not permitted to utilize guest lecturers for bail bond continuing education courses.

Statutory Bail Requirements

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds. According to this chapter, "bail" and "bond" include any and all forms of pretrial release. Section 903.011, F.S.

Application

In connection with an application for bail, Florida law requires the defendant to provide information that is accurate, truthful, and complete without omissions to the best of the defendant's knowledge. Section 903.035(1)(a), F.S. Failure to provide truthful information may result in the revocation of bail and intentional misrepresentations is a criminal offense.

Surrender of defendant

After a defendant has been released on bail, the bail bond agent has the authority to "surrender", or return, the defendant to the custody of the person who would have held the defendant absent the bail. See s. 903.20, F.S. Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon

surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender. The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail. See s. 903.21(2), F.S.

Forfeiture of the bond

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." After forfeiture of a bail bond, the court is authorized to sell the bonds and retain the money. According to Florida law, a bond shall not be forfeited unless the information, indictment, or affidavit was filed within 6 months of the date of the arrest and the clerk of the court gave the bail bond agent at least 72 hours notice before the time of the required appearance of the defendant.

After a breach of the bond, Florida law authorizes a court to "discharge" a forfeiture (before it is paid to the county) within 35 days upon:

- (a) a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- (b) a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- (c) surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.

Section 903.26(5)(a)-(c), F.S.

If a bond has been breached and forfeited and has not been discharged, the money from the bond is paid to the county clerk of court and can be used in any manner by the county. Depending on the county's practice, the money made by a county from bond forfeitures may be either minimal or quite significant. According to the Florida Association of Court Clerks and Comptrollers . . .

Forfeiture to judgment

In cases where a bond has been forfeited and not paid or discharged by a court within 35 days, the court enters a judgment against the bail bond agent for the amount of the bond. After the judgment is entered, the court is required to furnish the Department of Insurance and the surety company issuing the bond with a certified copy of the judgment. If this judgment is not paid within 60 days, the court provides the Department of Insurance and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied. The Department of Insurance receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies.

Bail bond agents who have outstanding judgments which are unpaid for 60 days are precluded by law from executing bail bonds. After 75 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.

Remission of forfeiture

If there is a breach of a bail bond and a bond is forfeited and paid, Florida law provides several conditions upon which the court may enter an order of "remission" (or return) of the forfeiture. Forfeitures may be remitted or returned, as set forth in the following sliding schedule:

- (1) By order of the court upon an application made within 2 years of forfeiture;
- (2) If the defendant surrenders or is apprehended within 90 days of the forfeiture, the court may order remission of up to 100 percent of the forfeiture if the bail bond agent:
 - (a) apprehended and surrendered the defendant,
 - (b) substantially procured or caused the apprehension or surrender of the defendant,

(c) has attempted to procure or cause the apprehension or surrender of the defendant and the delay has not thwarted the proper prosecution of the defendant, or
(d) did not attempt to apprehend or surrender the defendant and the costs of returning the defendant have been deducted from the remission and the delay has not thwarted the proper prosecution of the defendant;

- (3) If the defendant surrenders or is apprehended within 180 days after forfeiture, the court may order remission of up to 95 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above;
- (4) If the defendant surrenders or is apprehended within 270 days after forfeiture, the court may order remission of up to 90 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above;
- (5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court may order remission of up to 85 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above; and
- (6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court may order remission of up to 50 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above.

Section 903.28(1)-(6), F.S. Under current law, the court may not order remission of any portion of the forfeiture after 2 years after the forfeiture.

Canceling the bond

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled. All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.

Application of the original appearance bond

Under Florida law, the original appearance bond does not guarantee:

- deferred sentences,
- the appearance of the defendant 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.

B. EFFECT OF PROPOSED CHANGES:

This bill would make a variety of changes to the law regulating and relating to bail bond agents.

Bail bond agent regulation

Continuing education requirements for bail bond agents would be modified so that bail bond agents would receive a certain amount of continuing education annually as opposed to biannually. Also, instructors of continuing education courses for bail bond agents would be required to be present at all classes and would be required to approve guest lecturers.

Bail bond application

The bill would subject all persons (instead of just the defendant) providing information in connection with a defendant's bail application to the requirements relating to truthfulness and accuracy. This would subject a defendant's bail to potential revocation or modification for any persons' inaccuracy or untruthfulness in connection with that defendant's bail application.

Surrender of defendant

The bill would provide a definition of the term "jurisdiction" for purposes of surrender.

Discharge of forfeiture of the bond

The period of time within which the court could grant a discharge of the forfeiture of a bond would be extended from 35 to 60 days and would provide that the court "shall" (instead of "may") discharge a forfeiture upon certain conditions. See Comments section of the analysis for a discussion of the bill's changing "may" to "shall." The bill would also require the court to discharge the forfeiture of a bond if the bail bond agent agrees to pay the cost of transferring the defendant to the jurisdiction of the court whenever the state refuses to extradite the defendant. Moreover, the clerk of court would be required to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.

Forfeiture to judgment

Coinciding with the time change relating to discharge, the bill would extend the time from 35 to 60 days before a clerk of court could enter a judgment against the bail bond agent. The bill would reduce from 60 to 35 days the period of time for the bail bond agent to pay the judgment. The bill would also provide that when a motion to set aside the judgment is filed, time frames would be tolled until the court disposes of the motion. See Comments section of the analysis for a discussion of other time frames within s. 903.27 that are not changed in the bill.

Remission of forfeiture

The bill would change the remission of forfeiture provisions so that *some* remission is required if the conditions are met. See Comments section of the analysis for a discussion of the language change from "may" to "shall" in s. 903.28, F.S.

The bill would remove the limitation relating to remission after 2 years after forfeiture. The bill would provide for up to 50 percent remission if the defendant surrenders or is apprehended any time after a year after the forfeiture.

Canceling the bond/application of the original appearance bond

The bill would provide that original appearance bonds expire 36 months from the date the bond was posted. The bill would also provide that if the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the bail bond agent on the original bond.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 648.385, 648.386, 903.21, 903.035, 903.26, 903.27, 903.28, 903.31, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 648.385, F.S., relating to continuing education requirements, to require 7 hours of continuing education for bail bond agents every year, as opposed to 14 hours of continuing education every two years.

Section 2: Amends s. 648.386, F.S., relating to qualifications for continuing education schools, to require supervising instructors to be present at all classes. This section would also require guest lecturers to be approved by the supervising instructor or the school.

Section 3: Amends s. 903.035, F.S., relating to applications for bail, to require all persons (not just defendants) providing information in connection with a defendant's application for bail to be subject to accuracy and truthfulness requirements.

Section 4: Amends s. 903.21, F.S., relating to method of surrender and exoneration of obligors, to define the term "jurisdiction" to mean the judicial circuit as prescribed by law.

Section 5: Amends s. 903.26, F.S., relating to forfeiture of bonds and discharge of forfeiture, to extend the period of time from 35 to 60 days within which the court could discharge a forfeiture. This section would also require the court to discharge a forfeiture whenever the state refuses to extradite the defendant and the bail bond agent agrees to pay to bring the defendant back to the jurisdiction of the court. Lastly, this section would require the clerk of court to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgement.

Section 6: Amends s. 903.27, F.S., relating to forfeiture of judgment, to extend the period of time from 35 to 60 days before the clerk of court could enter a judgment against the bail bond agent. The bill would also reduce the period of time from 60 to 35 days for the bail bond agent to pay the judgment. Finally, this section would require these time frames to be tolled when a motion to set aside the judgment is filed.

Section 7: Amends s. 903.28, F.S., relating to remission of forfeiture, to permit remission of up to 50 percent of the forfeiture if the defendant is apprehended after 1 year after the forfeiture. This section also changes the term "may" to "shall" throughout s. 903.28, F.S. For a discussion of this language change, see the Comments section of the analysis.

Section 8: Amends s. 903.31, F.S., relating to canceling the bond, to provide that the original appearance bond expires 36 months after the bond has been posted. This section would also provide that original appearance bonds which are forfeited or revoked shall not be reinstated without approval from the bail bond agent.

Section 9: Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The fiscal impact of the bill is indeterminate because the practices relating to bond forfeiture vary from county to county. See the fiscal comments section of the analysis.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The fiscal impact of the bill is indeterminate because the practices relating to bond forfeiture vary from county to county. See the fiscal comments section of the analysis.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

As a result of this bill, bail bond agents and surety companies could lose less money to forfeiture due to the mandatory discharge portions of the bill and the removal of the 2 year limit on orders of remission.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate because it is entirely dependent on whether the bill results in a reduction of the number and amount of bail bond forfeitures in a particular county. Whether the bill results in a reduction in bail bond forfeitures depends on the practices of the county and the manner in which judicial discretion is exercised.

For example, this bill extends the period of time for a court to remit portions of forfeitures and mandates the discharge of forfeiture under certain conditions. Therefore, the bill could reduce the amount of money raised by counties through the forfeiture of bail bonds. Counties where bail bonds are frequently forfeited, and not subsequently discharged or remitted, could experience a reduction in money raised through bail bond forfeiture. However, counties where bail bond forfeitures are routinely discharged and remitted would probably not experience a reduction in money as a result of this bill.

The bill also appears to remove discretion from the court with regard to discharge and remission of forfeitures by changing the discretionary term "may" to the mandatory term "shall" in various places in the statute. As pointed out in the Comments section of the analysis, in many places in the bill this change in terminology does not actually remove discretion from the court. Nevertheless, if courts exercise their discretion differently as a result of this change in terminology, those counties may experience a reduction in revenue from bail bond forfeitures. Since it is not possible to predict how courts will interpret this bill, its fiscal impact is indeterminate.

This potential loss of revenue for counties could also impact the state general revenue fund since counties are allocated certain funds from general revenue for circuit courts and for aid to local governments. To the extent counties lose revenue from reduced bail bond forfeitures, counties could need additional funding from general revenue. This impact would also be indeterminate since the practices relating to bond forfeitures vary from county to county.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

"May" vs. "Shall"

In sections 5 and 7 of the bill, the discretionary term "may" is changed to the mandatory term "shall." As such, in both sections it appears the bill is designed to remove discretion from the court. For example, in section 5, the bill would provide that the court "shall" discharge a forfeiture upon certain circumstances. Moreover, in section 7, the bill would provide that the court "shall" order remission of forfeiture upon certain conditions.

However, in both of these sections the conditions upon which forfeitures are discharged and remitted by the court are themselves discretionary in nature. For instance, in two places in section 5, the discharge of forfeiture must be predicated on a "**determination**" by the court that "it was impossible for the defendant to appear" or a determination that delay "has not thwarted the proper prosecution of the defendant." Regardless of the bill's changing "may" to "shall", these two determinations would remain up to the subjective interpretation of the judge as to what constitutes "impossible" and what constitutes delay which "thwarts proper prosecution." Furthermore, in section 7, the court has the authority to remit "**up to**" a certain percentage of the forfeiture if certain conditions are met. Therefore, even with the change from "may" to "shall", the court still has the discretion to determine what percentage, if any, will be remitted.

Therefore, in some places, the bill does not remove discretion from the court with respect to discharge and remission of forfeitures.

Time Frames

In addition, the bill changes time frames within s. 903.27(1), F.S. However, the bill does not change the time frames within s. 903.27(3), (4), and (5) or s. 648.44(1)(l), F.S., each of which are tied to the time frames in s. 903.27(1), F.S. Therefore, without a conforming amendment, there would be contradiction among these statutory sections.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 1999, the House Committee on Insurance adopted a strike-everything amendment (offered by Representative Byrd) to HB 717, which made several changes to the bill. The strike-everything amendment differs from the original bill in that it would:

- revise the law so that guest lecturers may teach continuing education courses for bail bond agents in the presence of the supervising instructor;
- make changes to time frames in current law in order to conform to proposed changes in the bill;
- remove a provision of the bill relating to discharge when the state refuses to extradite;

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- provide that clerical errors by county, correctional, or court employees on bail bond applications are not subject to the criminal penalty proposed in the bill; and
- revise the bill's proposed language to require sheriffs to affirm that defendants are in custody and bail bond agents to pay the costs of returning defendants, prior to requiring the clerk to discharge a forfeiture.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge