

JAN 24 2007

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# A BILL FOR AN ACT

RELATING TO BAIL.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that bail and bail bonding  
2 agents provide an extraordinarily valuable service to law  
3 enforcement and accused persons alike. The bail clause of the  
4 eighth amendment of the United States Constitution embodies the  
5 long-standing Anglo-American tradition that favors pretrial  
6 release of accused persons. Pretrial release on bail frees up  
7 crowded jail space and permits defendants to participate more  
8 fully in their defense. Bail bonding agents, backed by surety  
9 insurance companies, make possible the pretrial release of more  
10 than two million defendants annually, at no expense to taxpayers,  
11 while providing assurances that people charged with crimes will  
12 appear as scheduled to answer those charges.

13           The legislature finds that persons authorized to apprehend  
14 bail fugitives have very broad common law powers to arrest a  
15 person. To protect against abuses, many states have enacted laws  
16 regulating the conduct of persons who apprehend bail fugitives.



1 Four states have banned the practice outright, twelve others  
2 require licenses, and others restrict certain types of conduct.

3 The purpose of this Act is to:

- 4 (1) Require a bail bonding agent to be licensed;
- 5 (2) Require the director of commerce and consumer affairs  
6 to adopt rules for the process and procedure of  
7 obtaining a bail bonding agent license;
- 8 (3) Establish prohibited acts of bail bonding agents and  
9 provide for civil and criminal penalties;
- 10 (4) Require bail fugitive recovery persons to register  
11 with the attorney general and undergo a background  
12 check; and
- 13 (5) Require the director of commerce and consumer affairs  
14 to adopt rules to regulate compensated sureties.

15 SECTION 2. Chapter 804, Hawaii Revised Statutes, is  
16 amended by adding a new part to be appropriately designated and  
17 to read as follows:

18 "PART . BAIL FUGITIVE RECOVERY

19 §804-A Definitions. As used in this part, unless the  
20 context otherwise requires:

21 "Bail bonding agent" or "bonding agent" means any person who  
22 furnishes bail for compensation in any court in this State and



1 who is appointed by an insurer by power of attorney to execute or  
2 countersign bail bonds in connection with judicial proceedings  
3 and who is other than a full-time salaried officer or employee of  
4 an insurer or a person who pledges United States currency, a  
5 United States postal money order, a cashier's check, or other  
6 property as security for a bail bond in connection with a  
7 judicial proceeding, whether for compensation or otherwise as  
8 defined under section 431:1-210.

9 "Bail fugitive" means a defendant in a pending criminal case  
10 who has been released from custody under a financially secured  
11 appearance, cash, or other bond and has had that bond declared  
12 forfeited, or a defendant in a pending criminal case who has  
13 violated a bond condition whereby apprehension and re-  
14 incarceration are permitted.

15 "Bail fugitive recovery person" means:

- 16 (1) A person who is provided written authorization by the  
17 bail agent of depositor of bail, and who is contracted  
18 to investigate, survey, locate, and arrest a bail  
19 fugitive for surrender to the appropriate court,  
20 correctional facility, or law enforcement agency; or  
21 (2) A person who is employed to assist a bail agent or  
22 depositor of bail to investigate, survey, locate, and



1           arrest a bail fugitive for surrender to the appropriate  
2           court, correctional facility, or law enforcement  
3           agency.

4           "Bail insurance company" means an insurer engaged in the  
5           business of writing bail appearance bonds through bonding agents  
6           and is subject to regulation by the insurance commissioner of the  
7           department of commerce and consumer affairs.

8           "Bail recovery" means actions taken by a person other than a  
9           law enforcement officer to apprehend an individual or take an  
10          individual into custody because of the failure of the individual  
11          to comply with bail bond requirements.

12          "Compensated surety" means any person in the business of  
13          writing bail appearance bonds who is subject to regulation by the  
14          director of commerce and consumer affairs.

15          "Depositor of bail" means a person or entity that has  
16          deposited money or bonds to secure the release of a person  
17          charged with a crime or offense.

18          "Law enforcement officer" has the same meaning as provided  
19          in section 710-1000.

20          "On the board" means that the name of a compensated surety  
21          has been publicly posted or disseminated by a court as being  
22          ineligible to write bail bonds.



1           **§804-B Bail fugitive apprehension; qualifications.** (a) No  
2 person, other than a law enforcement officer, shall be authorized  
3 to apprehend or arrest a bail fugitive unless the person is a:

4           (1) Bail agent;

5           (2) Depositor of bail;

6           (3) Private investigator licensed under chapter 463;

7           (4) Bail fugitive recovery person who:

8                   (A) Is at least eighteen years old;

9                   (B) Has not been convicted of a felony within the last  
10                   ten years;

11                   (C) Is registered with the attorney general; and

12                   (D) Has submitted to finger printing and a background  
13                   check as required by section 804-E.

14           (b) All persons authorized under this section shall comply  
15 with all laws while apprehending or arresting a bail fugitive.

16           **§804-C Bail fugitive recovery person; documentation**

17 **required.** (a) Notwithstanding the requirements of section  
18 804-B(a)(4), a bail fugitive recovery person shall be required to  
19 have in the person's possession proper documentation of authority  
20 to apprehend or arrest a bail fugitive issued by the bail bonding  
21 agent or depositor of bail. Documentation of authority shall  
22 include:



1 (1) The name of the bail fugitive recovery person, and any  
2 alias, if applicable;

3 (2) The principle business address of the bail fugitive  
4 recovery person; and

5 (3) The name and principle business address of the bail  
6 agency, compensated surety, or other party with whom  
7 the bail fugitive recovery person has a contract to  
8 apprehend or arrest the bail fugitive.

9 (b) At the time of surrendering the bail fugitive to the  
10 custody of any sheriff, chief of police, or any authorized  
11 subordinate, the bail fugitive recovery person shall provide a  
12 certified copy of the bond that was posted on behalf of the bail  
13 fugitive being surrendered.

14 (c) Nothing in this section shall require notice of  
15 exoneration of the surety when the bail fugitive is surrendered  
16 in open court.

17 **§804-D Prohibited acts.** (a) A person authorized under  
18 section 804-B to apprehend a bail fugitive shall not represent  
19 to a bail fugitive that they are a law enforcement officer.

20 (b) Nothing in this section shall prohibit a person  
21 authorized under section 804-B from wearing a uniform,  
22 bulletproof vest, badge, or other identification; provided that



1 the bulletproof vest, badge, or other identification is clearly  
2 marked "bail enforcement" or "bounty hunter."

3 **§804-E Bail fugitive recovery persons; background checks.**

4 (a) This section shall be administered by the attorney general,  
5 who may adopt rules pursuant to chapter 91 to effectuate the  
6 purpose of this section.

7 (b) Any person who wishes to be employed by a bail bonding  
8 agent to perform bail recovery services shall have their  
9 fingerprints taken by a local law enforcement agency for the  
10 purposes of obtaining a background check. The person shall  
11 submit payment by certified check or money order for the  
12 fingerprints and for the background check at the time the  
13 fingerprints are taken. The law enforcement agency taking the  
14 fingerprints pursuant to this section shall turn the fingerprints  
15 over to the attorney general, along with any payment rendered.

16 (c) Upon receipt of the fingerprints and the payment  
17 required by subsection (b), the attorney general shall conduct a  
18 background check for the purpose of determining whether the  
19 individual has been convicted of or pled guilty or nolo  
20 contendere to any felony under federal or state law during the  
21 previous ten years. The attorney general shall establish and



1 maintain files regarding the criminal background checks of all  
2 persons seeking to provide bail recovery services.

3 (d) The attorney general shall accept inquiries from bail  
4 bonding agents regarding criminal background checks of persons  
5 who have submitted fingerprints pursuant to subsection (b). The  
6 attorney general shall advise the bail bonding agent whether a  
7 background check has been completed and the results of any  
8 completed background check. The attorney general may charge a  
9 fee to any bail bonding agent requesting information pursuant to  
10 this section.

11 (e) Prior to hiring, contracting with, or paying any  
12 compensation to any person other than another bail bonding agent  
13 for bail recovery services, a bail bonding agent shall:

14 (1) Contact the attorney general pursuant to subsection (d)  
15 to confirm that the attorney general has completed a  
16 background check, that the person has met the  
17 requirements of subsection (b), and that the person has  
18 not been convicted of or pled guilty or nolo contendere  
19 to any felony under state or federal law in the last  
20 ten years; and



1           (2) Obtain an affidavit from the person as to the true and  
2           accurate nature of any information provided by the  
3           person to the bail bonding agent.

4           (f) The attorney general or any law enforcement agency, or  
5           any employees thereof, shall not be liable for any damages that  
6           may result from good faith compliance with this section.

7           **§804-F Bail bonding agents; licensing requirements.** (a)  
8           No person shall do business in this State as a bail bonding  
9           agent unless the person obtains a license pursuant to this part  
10          and the rules adopted by the director of commerce and consumer  
11          affairs.

12          (b) The director of commerce and consumer affairs shall  
13          adopt rules pursuant to chapter 91 to create the process and  
14          procedure for obtaining a license under this part.

15          **§804-G Denial, probation, suspension, revocation, and**  
16          **termination of license.** (a) The director of commerce and  
17          consumer affairs may refuse to issue or may revoke, suspend, or  
18          deny renewal of a bail bonding agent license, if, after notice to  
19          the applicant or licensee and a hearing, the director finds:

20          (1) That the applicant or licensee provided incorrect,  
21          misleading, incomplete, or materially untrue  
22          information in the license application;



- 1           (2)   The applicant or licensee obtained or is attempting to  
2           obtain a license through misrepresentation or fraud;
- 3           (3)   The applicant or licensee has been convicted of a crime  
4           of moral turpitude. For the purposes of this section,  
5           "crime of moral turpitude" shall include any sexual  
6           offense against a child;
- 7           (4)   The applicant or licensee has engaged in the commission  
8           of any unfair trade practice or fraud;
- 9           (5)   The applicant or licensee has engaged in the use of  
10          fraudulent, coercive, or dishonest practices or has  
11          demonstrated incompetence, untrustworthiness, or  
12          financial irresponsibility in the State or elsewhere;
- 13          (6)   The applicant or licensee has been convicted of forgery  
14          of another's name to an application for a bail bonding  
15          agent license or to any document related to a bail  
16          bonding agent transaction;
- 17          (7)   The applicant or licensee has violated any section of  
18          this part; or
- 19          (8)   The applicant or licensee has failed to fully meet the  
20          licensing requirements provided for in this part and by  
21          the rules adopted by the director.



1           (b) Any order by the director issued pursuant to  
2 subsection (a) is reviewable by a court of competent  
3 jurisdiction.

4           **§804-H Prohibited activities; bail bonding agents; civil**  
5 **penalties.** (a) No bail bonding agent shall:

6           (1) Knowingly fail to comply with or knowingly violate any  
7 provisions of this part, any rule adopted by the  
8 director of commerce and consumer affairs, or any court  
9 order;

10          (2) Fail to satisfy, pay, or otherwise discharge a bail  
11 forfeiture judgment after having their name placed on  
12 the board for more than forty-five consecutive days for  
13 the same forfeiture;

14          (3) Have been convicted of a felony or have pled guilty or  
15 nolo contendere to a felony within the last ten years,  
16 regardless of whether the conviction or plea resulted  
17 from conduct in or related to the bail bond business;

18          (4) Fail to report, preserve without use and retain  
19 separately, or return collateral taken as security on  
20 any bond to the principal, indemnitor, or depositor of  
21 such collateral;



- 1 (5) Fail to pay a final, nonappealable judgment award for  
2 failure to return or repay collateral received to  
3 secure a bond;
- 4 (6) Hire, contract with, or pay compensation to any  
5 individual for bail recovery services in violation of  
6 this part;
- 7 (7) Continue to execute bail bonds in any court in this  
8 State while on the board, where the bail forfeiture  
9 judgment that resulted in being placed on the board has  
10 not been paid, stayed, vacated, exonerated, or  
11 otherwise discharged; or
- 12 (8) Pay, directly or indirectly, any commission, service  
13 fee, brokerage, or other valuable consideration to any  
14 person selling, soliciting, or negotiating bail within  
15 this State unless, at the time the services were  
16 performed, the person was a duly licensed bail bonding  
17 agent as required by this part.

18 (b) After a hearing on the matter, if the director finds  
19 that a violation of this section has occurred, the director may  
20 deny, suspend, revoke, or terminate a license.

21 (c) Any order by the director issued pursuant to subsection  
22 (b) is reviewable by a court of competent jurisdiction.



1           (d) Except for the activities prohibited in subsection  
2 (b) (3), the director, in lieu of denying the renewal of,  
3 suspending, revoking, or terminating a license, may order the  
4 licensee to pay a civil fine in the sum of no less than \$300 and  
5 no more than \$1,000 for each violation. Upon the failure of the  
6 licensee to pay any civil fine within twenty days of its  
7 issuance, the director may deny the renewal of, suspend, revoke,  
8 or terminate the licensee's license; provided that the order of  
9 the director is not stayed by a court of competent jurisdiction.

10           **§804-I Prohibited activities; bail bonding agents;**  
11 **criminal penalties.** (a) It shall be unlawful for a bail bonding  
12 agent to engage in the following activities:

13           (1) Specify, suggest, or advise the employment of any  
14 particular attorney to represent the bail bonding  
15 agent's principal;

16           (2) Pay a fee, rebate, give, or promise to give anything  
17 of value to a jailer, law enforcement officer, clerk,  
18 deputy clerk, any other employee of any court,  
19 district attorney or any district attorney's  
20 employees, or any person who has power to arrest or to  
21 hold any person in custody;



- 1           (3) Pay a fee, rebate, or give anything of value to an  
2           attorney in bail bond matters, except in defense of  
3           any action on a bond or as counsel to represent the  
4           bail bonding agent or the bail bonding agent's  
5           representative or employees;
- 6           (4) Pay a fee, rebate, give, or promise to give anything  
7           of value to the person on whose bond the bail bonding  
8           agent is a surety;
- 9           (5) Fail to return any collateral or security, except for  
10          any fee received for the bond, within ten working days  
11          after receipt of a copy of the court order that  
12          results in a release of the bond by the court, unless  
13          the collateral also secures other obligations. A copy  
14          of the court order shall be provided to the bail  
15          bonding agent in the State or the company, if any, for  
16          whom the bail bonding agent works whether in the State  
17          or out-of-state, or both, by the person for whom the  
18          bond was written;
- 19          (6) Accept anything of value from a person on whose bond  
20          the bail bonding agent is a surety or from others on  
21          behalf of the person, except the fee or premium on the



1 bond; provided that the bail bonding agent may accept  
2 collateral security or other indemnity if:

3 (A) No collateral or security in tangible property is  
4 taken by pledge or debt instrument which allows  
5 retention, sale, or other disposition of such  
6 property upon default;

7 (B) No collateral or security interest in real  
8 property is taken by mortgage or any other  
9 instrument unless the bail bonding agent's  
10 interest in the property is limited to the amount  
11 of the bond;

12 (C) The collateral or security taken by the bail  
13 bonding agent is not pledged directly to any  
14 court as security for any appearance bond; or

15 (D) The person from whom the collateral or security  
16 is taken is issued a receipt describing the  
17 condition of the collateral at the time it is  
18 taken into the custody of the bail bonding agent;

19 (7) Coerce, suggest, aid and abet, offer promise of favor,  
20 or threaten any person on whose bond the bail bonding  
21 agent is a surety or offers to become surety to induce  
22 that person to commit any crime;

- 1           (8) Act as a bail bonding agent in any court of record in  
2           this State while the name of the bail bonding agent is  
3           on the board, or under any circumstance where the bail  
4           bonding agent has failed to pay a bail forfeiture  
5           judgment after all applicable stays of execution have  
6           expired and the bond has not been otherwise exonerated  
7           or discharged;
- 8           (9) Have more than one bond posted at any one time and, in  
9           any single case, on behalf of any one person;
- 10          (10) Fail to issue to the person from whom collateral or  
11          security is taken a receipt which includes a  
12          description of the collateral or security at the time  
13          it is taken into the custody of the bail bonding  
14          agent; and
- 15          (11) Fail to post a bond within twenty-four hours of  
16          receipt of full payment or a signed contract for  
17          payment, or if the bond is not posted within twenty-  
18          four hours of receipt of full payment or a signed  
19          contract for payment, failure to refund all moneys  
20          received, release all liens, and return all collateral  
21          within forty-eight hours of receipt of the payment or  
22          contract.



1 (b) Any bail bonding agent who violates subsection (a)  
2 shall be guilty of a misdemeanor and, upon conviction thereof,  
3 shall be punished by a fine of no more than \$1,000, imprisonment  
4 of no more than one year, or both; provided that any criminal  
5 penalty required by this section shall be in addition to, and  
6 not exclusive of, any other applicable penalty required by law.

7 (c) Any person who acts or attempts to act as a bail  
8 bonding agent and who is not licensed as required under this  
9 part, shall be guilty of a misdemeanor and, upon conviction  
10 thereof, shall be punished by a fine of no more than \$1,000,  
11 imprisonment for no more than one year, or both.

12 **§804-J Compensated sureties; rules and regulations.** The  
13 director of commerce and consumer affairs shall adopt rules  
14 pursuant to chapter 91 to regulate compensated sureties."

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun, before its effective date.

18 SECTION 4. The revisor of statutes shall substitute the  
19 appropriate numerical designations for letters.

20 SECTION 5. This Act shall take effect upon its approval;  
21 provided that enforcement of section 2 of this Act shall not  
22 commence until the director of commerce and consumer affairs

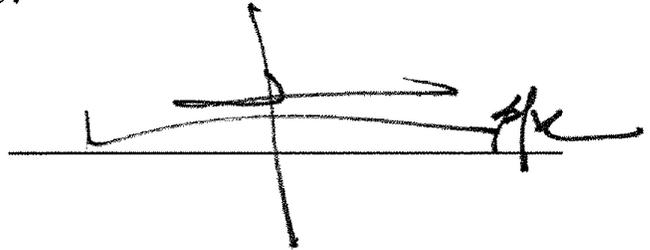


# S.B. NO. 1961

1 adopts rules as provided in section 1 of this Act and files the  
2 rules with the office of the lieutenant governor as provided in  
3 chapter 91, Hawaii Revised Statutes.

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INTRODUCED BY:

A handwritten signature in black ink, consisting of several overlapping horizontal and vertical strokes, positioned to the right of the 'INTRODUCED BY:' text.

**Report Title:**

Bail Bonds; Licensing; Commerce and Consumer Affairs; Attorney General

**Description:**

Creates a licensing requirement for bail bonding agents. Requires the director of commerce and consumer affairs to adopt rules for the process and procedure of obtaining a bail bonding agent license. Prohibits certain acts by bail bonding agents. Provides for civil and criminal penalties for violations by bail bonding agents. Creates registration requirements with the attorney general for bail fugitive recovery persons. Requires the director of commerce and consumer affairs to adopt rules regulating compensated sureties.

