

## House Bill No. 717

An act relating to bail bonds; amending s. 648.386, F.S.; revising certain continuing education requirements; amending s. 648.44, F.S.; revising requirement relating to bail bond agents; amending s. 903.21, F.S.; providing a definition; amending s.903.26, F.S.; requiring “amending s. 903.25, F.S.; requiring” amending s.903.26, F.S.; requiring discharge of a forfeiture with a time certain; providing an additional criterion for discharge of a forfeiture; requiring a clerk of court to set aside a forfeiture and discharge a bond under certain circumstances; amending s. 903.27, F.S.; providing for tolling certain forfeiture operations under certain circumstances; amending s. 903.28, F.S.; requiring remissions to be granted under certain circumstances; amending s. 903.31, F.S.; providing for expiration of certain bonds under certain circumstances; specifying nonapplication when a bond is declared forfeited; prohibiting reinstatement of original appearance bonds under certain circumstances; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) and paragraph (a) of subsection (4) of section 648.386, Florida Statutes, are amended to read:

648.386 Qualifications for prelicensing and continuing education schools and instructors.—

(2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and professional bail bond agent continuing education school, such entity must:

(c) Offer continuing education classes which are comprised of a minimum of 2 hours of approved coursework and are taught by an approved supervising instructor or guest lecturer approved by the entity or the supervising instructor.

(4) INSTRUCTOR'S DUTIES AND QUALIFICATIONS.—

(a) Each course must have a supervising instructor who is approved by the department. The supervising instructor shall be present at all classes. The supervising instructor is responsible for:

1. All course instructors.
2. All guest lecturers.
3. The course outlines and curriculum.
4. Certification of each attending limited surety agent or professional bail bond agent.

5. Completion of all required forms.
6. Assuring that the course is approved.

Either the entity or the supervising instructor may approve guest lecturers.

Section 2. Paragraph (l) of subsection (1) of section 648.44, Florida Statutes, is amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent, temporary bail bond agent, or runner may not:

(l) Execute a bond in this state if a judgment has been entered on a bond executed by the bail bond agent, which has remained unpaid for ~~35~~ 60 days, unless the full amount of the judgment is deposited with the clerk in accordance with s. 903.27(5).

Section 3. Subsection (3) of section 903.21, Florida Statutes, is amended to read:

903.21 Method of surrender; exoneration of obligors.—

(3) The surety shall be exonerated of liability on the bond if it is determined prior to breach of the bond that the defendant is in any jail or prison and the surety agrees in writing to pay the transportation cost of returning the defendant to the jurisdiction of the court. For purposes of this subsection, "jurisdiction" means within the judicial circuit as prescribed by law.

Section 4. Subsection (5) of section 903.26, Florida Statutes, is amended, and subsection (8) is added to said section, to read:

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

(5) The court shall ~~may~~ discharge a forfeiture within 60 ~~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. The potential adverse economic consequences of appearing as required shall not be considered as constituting a ground for such a determination;

(b) A determination that, at the time of the required 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. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court.

(8) If the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment, the clerk, upon affirmation by the sheriff or the chief correctional officer, shall, without further order of the court, discharge the forfeiture of the bond. However, if the surety agent fails to pay the costs and expenses incurred in returning the defendant to the county of jurisdiction, the clerk shall not discharge the forfeiture of the bond. If the surety agent and the county attorney fail to agree on the amount of said costs then the court, after notice to the county attorney, shall determine the amount of the costs.

Section 5. Subsections (1), (3), (4) and (5) of section 903.27, Florida Statutes, are amended to read:

903.27 Forfeiture to judgment.—

(1) If the forfeiture is not paid or discharged by order of a court of competent jurisdiction within ~~60~~ 35 days and the bond is secured other than by money and bonds authorized in s. 903.16, the clerk of the circuit court for the county where the order was made shall enter a judgment against the surety for the amount of the penalty and issue execution. Within 10 days, the clerk shall furnish the Department of Insurance with a certified copy of the judgment docket and shall furnish the surety company at its home office a copy of the judgment, which shall include the power of attorney number of the bond and the name of the executing agent. If the judgment is not paid within ~~35~~ 60 days, the clerk shall furnish the Department of Insurance and the sheriff of the county in which the bond was executed, or the official responsible for operation of the county jail, if other than the sheriff, two copies of the judgment and a certificate stating that the judgment remains unsatisfied. When and if the judgment is properly paid or an order to vacate the judgment has been entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or the official responsible for the operation of the county jail, if other than the sheriff, and the Department of Insurance, if the department had been previously notified of nonpayment, of such payment or order to vacate the judgment. The clerk shall also immediately prepare and record in the public records a satisfaction of the judgment or record the order to vacate judgment. If the defendant is returned to the county of jurisdiction of the court, whenever a motion to set aside the judgment is filed, the operation of this section is tolled until the court makes a disposition of the motion.

(3) Surety bail bonds may not be executed by a bail bond agent against whom a judgment has been entered which has remained unpaid for ~~35~~ 60 days and may not be executed for a company against whom a judgment has been entered which has remained unpaid for ~~50~~ 75 days. No sheriff or other official who is empowered to accept or approve surety bail bonds shall accept or approve such a bond executed by such a bail bond agent or executed for such a company until such judgment has been paid.

(4) After notice of judgment against the surety given by the clerk of the circuit court, the surety or bail bond agent shall, within ~~35~~ 60 days of the entry of judgment, submit to the clerk of the circuit court an amount equal to the judgment, unless the judgment has been set aside by the court within

~~35~~ 60 days of the entry of judgment. If a motion to set aside the judgment has been filed pursuant to subsection (5), the amount submitted shall be held in escrow until such time as the court has disposed of the motion. The failure to comply with the provisions of this subsection constitutes a failure to pay the judgment.

(5) After notice of judgment against the surety given by the clerk of the circuit court, the surety or bail bond agent may within ~~35~~ 60 days file a motion to set aside the judgment or to stay the judgment. It shall be a condition of any such motion and of any order to stay the judgment that the surety pay the amount of the judgment to the clerk, which amount shall be held in escrow until such time as the court has disposed of the motion to set aside the judgment. The filing of such a motion, when accompanied by the required escrow deposit, shall act as an automatic stay of further proceedings, including execution, until the motion has been heard and a decision rendered by the court.

Section 6. Section 903.28, Florida Statutes, is amended to read:

903.28 Remission of forfeiture; conditions.—

(1) On application within 2 years from forfeiture, the court shall order remission of the forfeiture if it determines that there was no breach of the bond.

(2) If the defendant surrenders or is apprehended within 90 days after forfeiture, the court, on motion at a hearing upon notice having been given to the county attorney and state attorney as required in subsection (8), shall ~~may~~ direct remission of up to, but not more than, 100 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall ~~may~~ be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when 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, on motion at a hearing upon notice having been given to the county attorney and state attorney as required in subsection (8), shall ~~may~~ direct remission of up to, but not more than, 95 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall ~~may~~ be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been

deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

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

(5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court, on motion at a hearing upon notice having been given to the county attorney and state attorney as required in subsection (8), shall ~~may~~ direct remission of up to, but not more than, 85 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall ~~may~~ be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court, on motion at a hearing upon notice having been given to the county attorney and state attorney as required in subsection (8), shall ~~may~~ direct remission of up to, but not more than, 50 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall ~~may~~ be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(7) The remission of a forfeiture may not be ordered for any reason other than as specified herein.

(8) An application for remission must be accompanied by affidavits setting forth the facts on which it is founded; however, the surety must estab-

lish by further documentation or other evidence any claimed attempt at procuring or causing the apprehension or surrender of the defendant before the court may order remission based upon an attempt to procure or cause such apprehension or surrender. The state attorney and the county attorney must be given 20 days' notice before a hearing on an application and be furnished copies of all papers, applications, and affidavits. Remission shall be granted on the condition of payment of costs, unless the ground for remission is that there was no breach of the bond.

Section 7. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.—

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, shall furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited.

(2) The original appearance bond shall not be construed to 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 the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

Approved by the Governor June 8, 1999.

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