

CHAPTER 2017-168

Committee Substitute for Committee Substitute for House Bill No. 361

An act relating to bail bonds; amending s. 903.045, F.S.; revising legislative intent concerning the obligations of a bail bond agent; revising the commitments and obligations of a bail bond agent; revising the circumstances that constitute a breach by the bail bond agent; amending s. 903.26, F.S.; revising the circumstances under which a surety bond deposited as bail must be forfeited; revising the circumstances that require a forfeiture to be discharged; amending s. 903.31, F.S.; specifying that certain provisions concerning cancellation of a bond do not apply if the bond is forfeited within a specified period after it has been posted; providing that an original appearance bond does not guarantee placement in a court-ordered program; providing an effective date.

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

Section 1. Section 903.045, Florida Statutes, is amended to read:

903.045 Nature of criminal surety bail bonds.—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 licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, 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 for which the surety bond is posted and otherwise fulfills all conditions of the bond. ~~The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.~~

Section 2. Subsections (2), (5), (7), and (8) of section 903.26, Florida Statutes, are amended to read:

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

(2)(a) ~~If there is a failure of the defendant to appear as required breach of the bond,~~ the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail or electronically transmit a notice to the surety agent and surety company within 5 days after the forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed or electronically transmitted on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing or electronic transmission was properly accomplished as indicated therein. If such mailing or electronic transmission was properly accomplished as

evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such notice shall not constitute a defense to such forfeiture and shall not be grounds for discharge, remission, reduction, set aside, or continuance of such forfeiture. The forfeiture shall be paid within 60 days after of the date the notice was mailed or electronically transmitted.

(b) Failure of the defendant to appear at the time, date, and place of required appearance shall result in forfeiture of the bond. Such forfeiture shall be automatically entered by the clerk upon such failure to appear, and the clerk shall follow the procedures ~~outlined~~ in paragraph (a). However, the court may determine, in its discretion, in the interest of justice, that an appearance by the defendant on the same day as required does not warrant forfeiture of the bond; and the court may direct the clerk to set aside any such forfeiture which may have been entered. Any appearance by the defendant later than the required day constitutes forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the clerk.

(c) If there is a forfeiture ~~breach~~ of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent or surety company.

(5) The court shall discharge a forfeiture within 60 days upon:

(a) A determination that it was impossible for the defendant to appear as required or within 60 days after the date of the required appearance due to circumstances beyond the defendant’s control. The potential adverse economic consequences of appearing as required may ~~shall~~ not be considered as constituting a ground for such a determination;

(b) A determination that, at the time of the required appearance or within 60 days after the date of the required appearance, the defendant was ~~adjudicated insane and confined in an institution or hospital; or~~ was confined in any county, state, federal, or immigration detention facility; was deported; or is deceased ~~a jail or prison~~;

(c) Surrender or arrest of the defendant at the time of the required appearance or within 60 days after the date of the required appearance in any county, state, or federal jail or prison and upon a hold being placed to return the defendant to the jurisdiction of the court 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; or

(d) A determination that the state is unwilling to seek extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent’s consent to pay all costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond.

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

(8) If the defendant is arrested and returned to the county of jurisdiction of the court or has posted a new bond for the case at issue before ~~prior to~~ judgment, the clerk, upon affirmation by the sheriff or the chief correctional officer, shall, without further hearing or 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 sheriff fail to agree on the amount of said costs, then the court, after notice to the sheriff and the state attorney, shall determine the amount of the costs.

Section 3. 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, the clerk of the court shall mail or electronically furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence or, an acquittal, if a period of 36 months has passed since the original bond was posted, or a withholding of an adjudication of guilt 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 before the 36-month expiration.

(2) The original appearance bond does not guarantee a deferred sentence; sentences, appearance during or after a presentence investigation; appearance during or after appeals; conduct during or appearance after admission to a pretrial intervention program; placement in a court-ordered program, including a residential mental health facility; 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.

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

Section 4. This act shall take effect July 1, 2017.

Approved by the Governor June 26, 2017.

Filed in Office Secretary of State June 26, 2017.