

AMENDED IN SENATE APRIL 19, 2004

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1744

Introduced by Senator Dunn

February 20, 2004

An act to amend Sections 1305, 1306, and 1308 of, and to repeal Section 1305.4 of, the Penal Code, relating to bail services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1744, as amended, Dunn. Bail services.

Existing law provides for a right to bail, as specified, and provides for the posting of a bond in lieu of cash bail. Bail may be forfeited in accordance with specified procedures that require notice be provided to the surety or depositor of money left as bond if the amount of the bail is in excess of \$400. Existing law provides that if the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then any required notice of the forfeiture shall be mailed to the surety at that address and to the bail agent.

This bill would ~~specify that this notice shall be mailed to the surety and the bail agent if the bond plainly displays~~ *require the bond to plainly display* the mailing addresses of both the statutory home office of the corporate surety and the bail agent *if the surety is an authorized corporate surety. It would separately require notice to be sent to both addresses to comply with these provisions.*

Under existing law, when a defendant comes before the court or otherwise is brought within the court's control within 180 days after forfeiture or notice of forfeiture of bail, as specified, the court is

authorized to vacate the forfeiture. Existing law requires that a motion relating to vacating forfeiture be filed within the 180-day period and heard within 30 days of the expiration of that 180-day period. The 30-day period may be extended for good cause. Existing law also authorizes a surety or depositor of bail to file a motion, based upon good cause, to extend the 180-day period of time, not exceeding 180 days from its order.

This bill would eliminate provisions allowing extension of the 180-day period, and allowing a hearing on a motion to vacate forfeiture after the conclusion of the 180-day period. It would also delete language authorizing the court to require that the moving party in these proceedings provide ~~10-days~~ *days*' prior notice to the applicable prosecuting agency as a condition to granting a motion.

Under existing law, a court that has declared a bond forfeited, after the period provided in law for vacating the forfeiture has passed, regardless of the amount of the bail, must enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. Existing law provides that this judgment shall be the amount of the bond plus costs, as specified. Existing law provides for an appeal procedure from a summary judgment against a surety or bondsman, and provides for an appeal bond to be supplied by a surety other than one filing the appeal, as specified.

This bill would specify that the amount of the summary judgment is due and payable within 30 days of the judgment. On appeal of the summary judgment, this bill would require the full amount of the summary judgment to be deposited with and placed in escrow by the superior court, to be returned within 30 days of the reversal of that judgment, with any interest retained by the court. It would give a bondsman or surety 180 additional days to exonerate the bond if ~~an~~ ~~appeal is filed and~~ the summary judgment is paid in full, as specified. It would delete the language authorizing an appeal bond in these circumstances.

Existing law precludes acceptance by a court or magistrate of any person or corporation as surety on bail if any summary judgment against that person or surety under these provisions is unpaid after 30 days, except upon appeal or as otherwise specified.

This bill would require the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance within 30 days following the entry of notice of summary judgment.



Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) A citizen's right to bail is fundamental and guaranteed by
4 both the Eighth Amendment to the United States Constitution and
5 Section 12 of Article I of the California Constitution. Consistent
6 with this right, Section 28 of Article I of the California
7 Constitution requires that the primary consideration in the setting
8 of bail is public safety.

9 (b) In recent years, there has been a startling rise in private
10 surety bail bonds being issued on high-risk defendants without
11 adequate collateral to insure their appearance, and in private surety
12 bail bond defaults, resulting in a fiscal loss to cities and counties.
13 In light of these circumstances, it is apparent that current
14 procedures that allow an appeal of a summary judgment following
15 the forfeiture of a private surety bail bond to proceed upon the
16 posting of a separate appeal bond does not adequately protect
17 public safety and the fiscal well-being of the state.

18 (c) It is in the interest of assuring that the right to bail is not
19 compromised and that public safety is protected that any forfeited
20 bond be paid in its entirety before the commencement of an appeal
21 by a private surety of an order of summary judgment on the
22 forfeiture. The payment of the full amount of the private surety
23 bail bond before the commencement of an appeal on a judgment
24 of a bail forfeiture order will return stability to the bail system, and
25 protect and insure public safety and the fiscal well-being of the
26 counties and cities in this state.

27 SEC. 2. Section 1305 of the Penal Code is amended to read:

28 1305. (a) A court shall in open court declare forfeited the
29 undertaking of bail or the money or property deposited as bail if,
30 without sufficient excuse, a defendant fails to appear for any of the
31 following:

- 32 (1) Arraignment.
- 33 (2) Trial.
- 34 (3) Judgment.

1 (4) Any other occasion prior to the pronouncement of
2 judgment if the defendant's presence in court is lawfully required.

3 (5) To surrender himself or herself in execution of the judgment
4 after appeal.

5 However, the court shall not have jurisdiction to declare a
6 forfeiture and the bail shall be released of all obligations under the
7 bond if the case is dismissed or if no complaint is filed within 15
8 days from the date of arraignment.

9 (b) If the amount of the bond or money or property deposited
10 exceeds four hundred dollars (\$400), the clerk of the court shall,
11 within 30 days of the forfeiture, mail notice of the forfeiture to the
12 surety or the depositor of money posted instead of bail. At the same
13 time, the court shall mail a copy of the forfeiture notice to the bail
14 agent whose name appears on the bond. The clerk shall also
15 execute a certificate of mailing of the forfeiture notice and shall
16 place the certificate in the court's file. If the notice of forfeiture is
17 required to be mailed pursuant to this section, the 180-day period
18 provided for in this section shall be extended by a period of five
19 days to allow for the mailing.

20 If the surety is an authorized corporate surety, ~~and if then the~~
21 bond ~~shall plainly displays~~ *display* the mailing addresses of both
22 the statutory home office of the corporate surety and the bail agent;
23 ~~then notice.~~ *Notice* of the forfeiture shall be mailed to the surety
24 at that address and to the bail agent, and mailing alone to the surety
25 or the bail agent shall not constitute compliance with this section.

26 The surety or depositor shall be released of all obligations under
27 the bond if any of the following conditions apply:

28 (1) The clerk fails to mail the notice of forfeiture in accordance
29 with this section within 30 days after the entry of the forfeiture.

30 (2) The clerk fails to mail the notice of forfeiture to the surety
31 at the address printed on the bond.

32 (3) The clerk fails to mail a copy of the notice of forfeiture to
33 the bail agent at the address shown on the bond.

34 (c) (1) If the defendant appears either voluntarily or in custody
35 after surrender or arrest in court within 180 days of the date of
36 forfeiture or within 180 days of the date of mailing of the notice
37 if the notice is required under subdivision (b), the court shall, on
38 its own motion at the time the defendant first appears in court on
39 the case in which the forfeiture was entered, direct the order of
40 forfeiture to be vacated and the bond exonerated. If the court fails



1 to so act on its own motion, then the surety's or depositor's
2 obligations under the bond shall be immediately vacated and the
3 bond exonerated. An order vacating the forfeiture and exonerating
4 the bond may be made on terms that are just and do not exceed the
5 terms imposed in similar situations with respect to other forms of
6 pretrial release.

7 (2) If, within the county where the case is located, the defendant
8 is surrendered to custody by the bail or is arrested in the underlying
9 case within the 180-day period, and is subsequently released from
10 custody prior to an appearance in court, the court shall, on its own
11 motion, direct the order of forfeiture to be vacated and the bond
12 exonerated. If the court fails to so act on its own motion, then the
13 surety's or depositor's obligations under the bond shall be
14 immediately vacated and the bond exonerated. An order vacating
15 the forfeiture and exonerating the bond may be made on terms that
16 are just and do not exceed the terms imposed in similar situations
17 with respect to other forms of pretrial release.

18 (3) If, outside the county where the case is located, the
19 defendant is surrendered to custody by the bail or is arrested in the
20 underlying case within the 180-day period, the court shall vacate
21 the forfeiture and exonerate the bail.

22 (4) In lieu of exonerating the bond, the court may order the bail
23 reinstated and the defendant released on the same bond if both of
24 the following conditions are met:

25 (A) The bail is given prior notice of the reinstatement.

26 (B) The bail has not surrendered the defendant.

27 (d) In the case of a permanent disability, the court shall direct
28 the order of forfeiture to be vacated and the bail or money or
29 property deposited as bail exonerated if, within 180 days of the
30 date of forfeiture or within 180 days of the date of mailing of the
31 notice if notice is required under subdivision (b), it is made
32 apparent to the satisfaction of the court that both of the following
33 conditions are met:

34 (1) The defendant is deceased or otherwise permanently unable
35 to appear in the court due to illness, insanity, or detention by
36 military or civil authorities.

37 (2) The absence of the defendant is without the connivance of
38 the bail.

39 (e) In the case of a temporary disability, the court shall order the
40 tolling of the 180-day period provided in this section during the



1 period of temporary disability, provided that it appears to the
2 satisfaction of the court that the following conditions are met:

3 (1) The defendant is temporarily disabled by reason of illness,
4 insanity, or detention by military or civil authorities.

5 (2) Based upon the temporary disability, the defendant is
6 unable to appear in court during the remainder of the 180-day
7 period.

8 (3) The absence of the defendant is without the connivance of
9 the bail.

10 The period of the tolling shall be extended for a reasonable
11 period of time, at the discretion of the court, after the cessation of
12 the disability to allow for the return of the defendant to the
13 jurisdiction of the court.

14 (f) In all cases where a defendant is in custody beyond the
15 jurisdiction of the court that ordered the bail forfeited, and the
16 prosecuting agency elects not to seek extradition after being
17 informed of the location of the defendant, the court shall vacate the
18 forfeiture and exonerate the bond on terms that are just and do not
19 exceed the terms imposed in similar situations with respect to other
20 forms of pretrial release.

21 (g) In all cases of forfeiture where a defendant is not in custody
22 and is beyond the jurisdiction of the state, is temporarily detained,
23 by the bail agent, in the presence of a local law enforcement officer
24 of the jurisdiction in which the defendant is located, and is
25 positively identified by that law enforcement officer as the wanted
26 defendant in an affidavit signed under penalty of perjury, and the
27 prosecuting agency elects not to seek extradition after being
28 informed of the location of the defendant, the court shall vacate the
29 forfeiture and exonerate the bond on terms that are just and do not
30 exceed the terms imposed in similar situations with respect to other
31 forms of pretrial release.

32 (h) As used in this section, “arrest” includes a hold placed on
33 the defendant in the underlying case while he or she is in custody
34 on other charges.

35 SEC. 3. Section 1305.4 of the Penal Code is repealed.

36 SEC. 4. Section 1306 of the Penal Code is amended to read:

37 1306. (a) (1) When any bond is forfeited and the period of
38 time specified in Section 1305 has elapsed without the forfeiture
39 having been set aside, the court which has declared the forfeiture,
40 regardless of the amount of the bail, shall enter a summary



1 judgment against each bondsman named in the bond in the amount
2 for which the bondsman is bound. The judgment shall be the
3 amount of the bond plus costs, and notwithstanding any other law,
4 no penalty assessments shall be levied or added to the judgment.
5 The full amount of the bond plus costs is due and payable within
6 30 days of the entry of the summary judgment. If an appeal is taken
7 by the surety or bondsman, the payment of the bond amount shall
8 be placed into an escrow account maintained by the superior court.
9 *If a summary judgment is reversed, the bond amount shall be*
10 *returned to the surety within 30 days of the final order reversing the*
11 *summary judgment.*

12 (2) If the summary judgment has been entered, ~~an appeal taken,~~
13 and the bond amount paid in full *on a timely basis*, the bondsman
14 or surety shall then have an additional 180 days *from the*
15 *expiration of the original 180-day period* to exonerate the bond for
16 any reason specified in Section 1305. If the summary judgment is
17 reversed or the bail exonerated for any reason specified in Section
18 1305 *during the second 180-day period*, the bond amount shall be
19 returned to the surety within 30 days of a final order reversing the
20 summary judgment or exonerating the bail. Any interest accrued
21 by the bond amount while in the escrow account shall belong to the
22 superior court.

23 (b) If a court grants relief from bail forfeiture, it shall impose
24 a monetary payment as a condition of relief to compensate the
25 people for the costs of returning a defendant to custody pursuant
26 to Section 1305, except for cases where the court determines that
27 in the best interest of justice no costs should be imposed. The
28 amount imposed shall reflect the actual costs of returning the
29 defendant to custody. Failure to act within the required time to
30 make the payment imposed pursuant to this subdivision shall not
31 be the basis for a summary judgment against any or all of the
32 underlying amount of the bail. A summary judgment entered for
33 failure to make the payment imposed under this subdivision is
34 subject to the provisions of Section 1308, and shall apply only to
35 the amount of the costs owing at the time the summary judgment
36 is entered, plus administrative costs and interests.

37 (c) If, because of the failure of any court to promptly perform
38 the duties enjoined upon it pursuant to this section, summary
39 judgment is not entered within 90 days after the date upon which



1 it may first be entered, the right to do so expires and the bail is
2 exonerated.

3 (d) A dismissal of the complaint, indictment, or information
4 after the default of the defendant shall not release or affect the
5 obligation of the bail bond or undertaking.

6 (e) The district attorney or county counsel shall:

7 (1) Demand immediate payment of the judgment within 30
8 days after the summary judgment becomes final.

9 (2) If the judgment remains unpaid for a period of 20 days after
10 demand has been made, shall forthwith enforce the judgment in the
11 manner provided for enforcement of money judgments generally.

12 (f) The right to enforce a summary judgment entered against a
13 bondsman pursuant to this section shall expire two years after the
14 entry of the judgment.

15 SEC. 5. Section 1308 of the Penal Code is amended to read:

16 1308. (a) No court or magistrate shall accept any person or
17 corporation as surety on bail if any summary judgment against that
18 person or corporation entered pursuant to Section 1306 remains
19 unpaid after the expiration of 30 days after service of the notice of
20 the entry of the summary judgment, provided that, if during the 30
21 days an action or proceeding available at law is initiated to
22 determine the validity of the order of forfeiture or summary
23 judgment rendered on it, this section shall be rendered inoperative
24 until that action or proceeding has finally been determined. The
25 clerk of the court shall file a notice of a surety's failure to pay a
26 summary judgment with the Department of Insurance within 30
27 days following the entry of notice of summary judgment.

28 (b) The clerk of the court in which the judgment is rendered
29 shall serve notice of the entry of judgment upon the judgment
30 debtor within five days after the date of the entry of the summary
31 judgment.

