

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2854

Introduced by Assembly Member Dymally

February 24, 2006

An act to amend Section 1810.7 of, and to add Section 1810.8 to, the Insurance Code, *to amend Section 1305 of*, and to add Sections 1276.7-~~and 1276.8~~, 1276.8, and 1309 to the Penal Code, relating to bail bonds.

LEGISLATIVE COUNSEL'S DIGEST

AB 2854, as amended, Dymally. ~~Insurance: bail bonds.~~ *Bail bonds: forfeiture.*

Existing law requires a bail bond to be forfeited if the defendant does not appear in court as specified. If the defendant appears in court, as provided, within 180 days of the forfeiture, the court shall order the forfeiture vacated and bail exonerated.

Existing law also provides that circumstances during which the 180-day period is tolled.

This bill would provide that the 180 days are tolled when there is a pending request or application for extradition of the defendant.

Existing law requires a court to enter summary judgment against each bondsman named in a bond which has been forfeited for a specified period of time in an amount equal to the amount of the bond plus costs. Existing law also allows for summary judgment moneys to be distributed to cities and counties as specified.

This bill would allow a bail agent or surety company who paid a summary judgment to recover the money paid if the surety or agent secured the return of the defendant, as specified.

~~Existing law requires that in order to qualify to take the examination required to be licensed to undertake the execution of bail bonds, an applicant must have completed not less than 12 hours of pretest classroom instruction on specified topics.~~

~~This bill would increase the number of pretest classroom instruction hours from 12 hours to 80 hours. This bill would also require that before a person could take the examination that he or she first complete a 40-hour prelicensing bail course provided by an entity approved by the Insurance Commissioner, as specified, and a 40-hour course provided by an entity certified by the Peace Officers Standards and Training, as specified.~~

~~Existing law generally regulates undertaking of execution of bail bonds.~~

~~This bill would provide that no person who holds a bail license shall execute an undertaking of bail unless the full premium due pursuant to the rate filing of the underwriting surety insurer is collected in full, or a written premium payment agreement, as specified, for the unpaid premium due is entered. The bill would further provide penalties for the violation of this provision.~~

~~Existing law does not prohibit the rebating of bail bond premiums.~~

~~This bill would provide that bail bond premiums may be rebated only under the circumstances specified including a requirement that bail be exonerated. The bill would further provide penalties for the violation of this provision.~~

~~This bill would provide that its provisions are severable and that if any of its provisions are held invalid, the remainder can be given effect without the invalid provision.~~

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

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

- 1 SECTION 1. Section 1810.7 of the Insurance Code is
- 2 amended to read:
- 3 1810.7. (a) In order to be eligible to take the examination
- 4 required to be licensed under this chapter, the applicant shall
- 5 have completed not less than 80 hours of classroom education in
- 6 subjects pertinent to the duties and responsibilities of a bail
- 7 licensee, including, but not limited to, all laws and regulations
- 8 related thereto, rights of the accused, ethics, and apprehension of

1 bail fugitives. Additionally, a licensee shall complete annually
2 not less than six hours of continuing education in these subjects
3 prior to renewal of his or her license.

4 (b) The commissioner shall approve or disapprove an
5 applicant to provide education for licensure as required by this
6 section within 90 days of receipt of the applicant's full and
7 complete application. However, this 90-day period shall be tolled
8 during the pendency of any investigation of the applicant by the
9 commissioner for an alleged violation that would, if proven,
10 result in the suspension, revocation, or denial of the provider's
11 approval to provide continuing education to bail agents as
12 prescribed in Section 1813. Failure to disapprove an applicant
13 within this period shall result in the automatic approval of the
14 application. Approval shall be valid for two years. The
15 commissioner may, at any time, disapprove any provider who is
16 not qualified or whose course outlines are not approved, who is
17 not of good business reputation, or who is lacking in integrity,
18 honesty, or competency. A provider shall not provide education
19 for licensure following the expiration of the two-year approval
20 period unless the commissioner has renewed the provider's
21 approval. The commissioner shall, at the time of renewal,
22 approve or disapprove the course outlines and schedule of classes
23 to be provided.

24 (c) Providers responsible for providing education for licensure
25 under this chapter shall consult with the California State Sheriffs'
26 Association, the California District Attorneys Association, and
27 the County Counsels Association of California prior to
28 submission of the course outlines for approval by the
29 commissioner, and these entities may respond within 30 days of
30 receipt of a request for consultation from a provider. Providers
31 shall maintain records of their requests for consultation and any
32 responses from these entities, and make these records available to
33 the department for review as requested. The bail license fee shall
34 be increased, the amount of which shall be determined by the
35 commissioner, which shall be deposited in the Insurance Fund
36 for the purposes of recovering the administrative costs for
37 meeting the conditions and purposes of this section. Providers of
38 education or continuing education shall offer courses to all
39 applicants at the same course fees.

1 (d) Any person who falsely represents to the commissioner
2 that compliance with this section has been met shall be subject,
3 after notice and hearing, to the penalties and fines set out in
4 Section 1814.

5 (e) A licensee shall not be required to comply with the
6 continuing education requirements of this section if the licensee
7 submits proof satisfactory to the commissioner that he or she has
8 been a licensee in good standing for 30 continuous years in this
9 state and is 70 years of age or older.

10 (f) The commissioner may make reasonable rules and
11 regulations necessary, advisable, and convenient for the
12 administration and enforcement of this chapter. The rules and
13 regulations may include a schedule establishing fees to be paid
14 by an applicant seeking approval to act as a provider and to
15 deliver courses under this section. Those fees shall be in an
16 amount no greater than fees paid by applicants providing similar
17 courses to other insurance agents licensed by the department, as
18 specified in Section 1751.1.

19 (g) Nothing in this chapter shall preclude completion of the
20 bail agent continuing education requirements of this section
21 through a course of instruction offered via the Internet or
22 correspondence. However, this subdivision shall not be construed
23 to allow completion of the prelicensing education requirements
24 of this section through such a course of instruction.

25 (h) Successful completion of the continuing education
26 requirements by means of an Internet or correspondence course
27 shall require obtaining a passing grade of at least 70 percent on a
28 written final examination. The final examination shall be open
29 book and shall be graded by the approved provider. The provider
30 shall issue certificates of completion only to those students who
31 have passed the final examination.

32 (i) No Internet or correspondence continuing education course
33 shall be provided pursuant to this section prior to April 1, 2006.
34 However, this subdivision shall not prohibit an approved
35 provider from advertising or promoting a course prior to that
36 date.

37 SEC. 2. Section 1810.8 is added to the Insurance Code, to
38 read:

39 1810.8. In order to be eligible for licensing examination
40 under this chapter, the applicant for licensure as a bail agent,

1 solicitor or permittee shall first complete a 40-hour prelicensing
2 bail course provided by an entity approved by the commissioner
3 pursuant to subdivisions (b) and (c) of Section 1810.7, and a
4 40-hour P.O.S.T. arrest powers and procedures class pursuant to
5 Section 832 of the Penal Code, offered by a P.O.S.T. approved
6 provider.

7 (a) In order to be approved as a prelicensing provider of
8 education for licensure, in addition to the requisites of
9 subdivision (b) of Section 1810.7, the provider must offer a
10 minimum of two 40-hour classroom instruction basic bail
11 certification courses of approved content per calendar year. The
12 40-hour course on power of arrest which is certified by the
13 Commission on Peace Officer Standards and Training (P.O.S.T.)
14 pursuant to Section 832 of the Penal Code, may be obtained from
15 any P.O.S.T. approved provider.

16 (b) The 40 hours of classroom instruction involving bail
17 curriculum shall be structured and presented as follows:

- 18 (1) Overview: Function of Bail Agents-two hours.
- 19 (2) Insurance and Regulatory Codes-six hours.
- 20 (3) Applicable Penal Code Provisions-four hours.
- 21 (4) Code of Ethics; Duties to Clients, etc.-four hours.
- 22 (5) Fiduciary Duties of the Bail Agent-two hours.
- 23 (6) Criminal and Courtroom Procedures-four hours.
- 24 (7) Special Obligations to the Court-two hours.
- 25 (8) Laws of Bail Forfeiture Section 1305 of the Penal
26 Code-four hours.
- 27 (9) Collateralizing Bail Undertakings-four hours.
- 28 (10) Fugitive Location Methods and Resources-four hours.
- 29 (11) Interaction with Police and Prosecutors-four hours.

30 (c) Prior to providing the above curriculum, any potential
31 education provider under this section shall submit a detailed
32 prelicensing course curriculum following the mandates of
33 subdivision (b), inclusive, for approval by the commissioner. In
34 addition to describing course content in detail under the 11 study
35 topics, and providing a tentative faculty schedule for the classes,
36 the provider shall submit comprehensive background statements
37 or curriculum vitae for the supervising instructor and all
38 identified instructors to the commissioner with the provider's
39 application for approval to provide instruction.

- 1 (d) The minimum qualifications for a supervising instructor
2 under this section are:
- 3 (1) An active status judge or court commissioner of this state.
 - 4 (2) An active status member of the State Bar who has been so
5 licensed for five or more years.
 - 6 (3) A licensed bail agent of this state who has been so licensed
7 for five or more years in good standing.
 - 8 (4) As to courses specified in subdivision paragraphs (10) and
9 (11) of subdivision (b), a current holder of a Private
10 Investigator’s license issued by the Department of Consumer
11 Affairs, which has been in force for an uninterrupted period of
12 five years or a sworn peace officer of this state with at least five
13 years of uninterrupted peace officer status.
- 14 (e) Each course shall have a designated supervising instructor,
15 approved by the commissioner as an instructor, who shall be
16 present at all classes conducted by the provider, whether or not
17 he or she is instructing. Additionally, the supervising instructor is
18 responsible for all of the following:
- 19 (1) Taking roll of attendees at the start of the morning and
20 afternoon class sessions, and again at the end of the afternoon
21 session;
 - 22 (2) Obtaining department approval of all instructors and
23 maintaining the schedule of instruction.
 - 24 (3) Approving all “guest lecturers” who may be utilized by the
25 provider during any given courses, and recording the amount of
26 time the guest lecturer was utilized.
 - 27 (4) Assuring proper coursework is presented for the periods
28 called for in this section, and that the instructor properly and
29 accurately presents the subject matter in a cohesive and
30 understandable manner.
 - 31 (5) Completing all required forms and certificates to certify to
32 the commissioner the names of those attendees who successfully
33 completed the coursework.
- 34 (f) Any supervising instructor, instructor, or lecturer who
35 teaches any coursework under this section for six or more hours
36 in a calendar year shall qualify for the same number of hours in
37 “continuing education” classroom hours towards the educational
38 mandate for his or her bail license renewal.
- 39 SEC. 3. Section 1276.7 is added to the Penal Code, to read:

1 1276.7. (a) No person who holds a bail license shall execute
2 an undertaking of bail unless: (1) the full premium due pursuant
3 to the rate filing of the underwriting surety insurer is collected in
4 full, or (2) a written premium payment agreement for the unpaid
5 premium due is entered. The premium payment agreement shall
6 set forth the schedule of payments due and be signed by a bail
7 bond licensee and the person responsible for paying the
8 premium.

9 (b) The repayment term of the premium payment agreement
10 may not exceed the following time periods:

11 (1) Six months from the date of execution of the undertaking
12 of bail in all cases where there is no recorded deed of trust on
13 real property securing the extension of credit.

14 (2) Two years from the date of execution of the undertaking of
15 bail in all cases where there is a recorded deed of trust on real
16 property securing the extension of credit.

17 (c) The original of the premium payment agreement shall be
18 retained by the bail licensee and a copy shall be provided to the
19 person responsible for paying the premium. The bail licensee
20 shall use good faith efforts to collect all amounts due pursuant to
21 the terms of the premium payment agreement.

22 (d) The Insurance Commissioner shall impose a fine of up to
23 five thousand dollars (\$5,000) on any bail licensee for first
24 violation of this section, suspension for up to 30 days for a
25 second violation of this section, and revocation of the bail
26 licensee's license for a third violation of this section.

27 SEC. 4. Section 1276.8 is added to the Penal Code, to read:

28 1276.8. (a) A rebate to a consumer in a bail bond transaction
29 shall only be made under the following conditions:

30 (1) A written agreement providing the details of the rebate is
31 executed by the bail licensee. The original of the rebate
32 agreement shall be retained by the bail licensee and a copy shall
33 be provided to the consumer.

34 (2) The consumer shall pay the full bail bond premium as
35 provided in the filed rate of the surety insurer prior to the release
36 of the defendant from custody.

37 (3) The rebate shall only be paid to the consumer after the bail
38 bond is exonerated and only if the surety insurer or its agents
39 have suffered no pecuniary loss on the bail bond.

1 (4) The commissioner shall impose a fine of up to five
 2 thousand dollars (\$5,000) on any bail licensee and the
 3 supervising agent or agency for each violation of this section. In
 4 the case of multiple violations of this section, the commissioner
 5 may suspend the license of the licensee and the supervising agent
 6 or agency for up to 30 days or may revoke the bail licensee’s and
 7 supervising agent or agencies license.

8 (b) The provisions of law relating to unlawful rebates shall not
 9 apply to commissions or consideration paid or exchanged
 10 between licensees under this chapter. However, the licensee who
 11 executes the undertaking or executes or delivers the bail bond
 12 shall, in all matters in respect thereto, be deemed in the principal
 13 and all licensees otherwise connected with the transactions shall
 14 be deemed the principal’s agents in respect thereto.

15 *SEC. 5. Section 1305 of the Penal Code is amended to read:*

16 1305. (a) A court shall in open court declare forfeited the
 17 undertaking of bail or the money or property deposited as bail if,
 18 without sufficient excuse, a defendant fails to appear for any of
 19 the following:

- 20 (1) Arraignment.
- 21 (2) Trial.
- 22 (3) Judgment.
- 23 (4) Any other occasion prior to the pronouncement of
 24 judgment if the defendant’s presence in court is lawfully
 25 required.
- 26 (5) To surrender himself or herself in execution of the
 27 judgment after appeal.

28 However, the court shall not have jurisdiction to declare a
 29 forfeiture and the bail shall be released of all obligations under
 30 the bond if the case is dismissed or if no complaint is filed within
 31 15 days from the date of arraignment.

32 (b) If the amount of the bond or money or property deposited
 33 exceeds four hundred dollars (\$400), the clerk of the court shall,
 34 within 30 days of the forfeiture, mail notice of the forfeiture to
 35 the surety or the depositor of money posted instead of bail. At the
 36 same time, the court shall mail a copy of the forfeiture notice to
 37 the bail agent whose name appears on the bond. The clerk shall
 38 also execute a certificate of mailing of the forfeiture notice and
 39 shall place the certificate in the court’s file. If the notice of
 40 forfeiture is required to be mailed pursuant to this section, the

1 180-day period provided for in this section shall be extended by
2 a period of five days to allow for the mailing.

3 If the surety is an authorized corporate surety, and if the bond
4 plainly displays the mailing address of the corporate surety and
5 the bail agent, then notice of the forfeiture shall be mailed to the
6 surety at that address and to the bail agent, and mailing alone to
7 the surety or the bail agent shall not constitute compliance with
8 this section.

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

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

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

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

18 (c) (1) If the defendant appears either voluntarily or in
19 custody after surrender or arrest in court within 180 days of the
20 date of forfeiture or within 180 days of the date of mailing of the
21 notice if the notice is required under subdivision (b), the court
22 shall, on its own motion at the time the defendant first appears in
23 court on the case in which the forfeiture was entered, direct the
24 order of forfeiture to be vacated and the bond exonerated. If the
25 court fails to so act on its own motion, then the surety's or
26 depositor's obligations under the bond shall be immediately
27 vacated and the bond exonerated. An order vacating the
28 forfeiture and exonerating the bond may be made on terms that
29 are just and do not exceed the terms imposed in similar situations
30 with respect to other forms of pretrial release.

31 (2) If, within the county where the case is located, the
32 defendant is surrendered to custody by the bail or is arrested in
33 the underlying case within the 180-day period, and is
34 subsequently released from custody prior to an appearance in
35 court, the court shall, on its own motion, direct the order of
36 forfeiture to be vacated and the bond exonerated. If the court fails
37 to so act on its own motion, then the surety's or depositor's
38 obligations under the bond shall be immediately vacated and the
39 bond exonerated. An order vacating the forfeiture and
40 exonerating the bond may be made on terms that are just and do

1 not exceed the terms imposed in similar situations with respect to
2 other forms of pretrial release.

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

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

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

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

12 (d) In the case of a permanent disability, the court shall direct
13 the order of forfeiture to be vacated and the bail or money or
14 property deposited as bail exonerated if, within 180 days of the
15 date of forfeiture or within 180 days of the date of mailing of the
16 notice if notice is required under subdivision (b), it is made
17 apparent to the satisfaction of the court that both of the following
18 conditions are met:

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

22 (2) The absence of the defendant is without the connivance of
23 the bail.

24 (e) In the case of a temporary disability, the court shall order
25 the tolling of the 180-day period provided in this section during
26 the period of temporary disability, provided that it appears to the
27 satisfaction of the court that the following conditions are met:

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

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

33 (3) *There is a pending request or application for extradition of*
34 *the defendant.*

35 (4) The absence of the defendant is without the connivance of
36 the bail.

37 The period of the tolling shall be extended for a reasonable
38 period of time, at the discretion of the court, after the cessation of
39 the disability to allow for the return of the defendant to the
40 jurisdiction of the court.

1 (f) In all cases where a defendant is in custody beyond the
2 jurisdiction of the court that ordered the bail forfeited, and the
3 prosecuting agency elects not to seek extradition after being
4 informed of the location of the defendant, the court shall vacate
5 the forfeiture and exonerate the bond on terms that are just and
6 do not exceed the terms imposed in similar situations with
7 respect to other forms of pretrial release.

8 (g) In all cases of forfeiture where a defendant is not in
9 custody and is beyond the jurisdiction of the state, is temporarily
10 detained, by the bail agent, in the presence of a local law
11 enforcement officer of the jurisdiction in which the defendant is
12 located, and is positively identified by that law enforcement
13 officer as the wanted defendant in an affidavit signed under
14 penalty of perjury, and the prosecuting agency elects not to seek
15 extradition after being informed of the location of the defendant,
16 the court shall vacate the forfeiture and exonerate the bond on
17 terms that are just and do not exceed the terms imposed in similar
18 situations with respect to other forms of pretrial release.

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

22 (i) A motion filed in a timely manner within the 180-day
23 period may be heard within 30 days of the expiration of the
24 180-day period. The court may extend the 30-day period upon a
25 showing of good cause. The motion may be made by the surety
26 insurer, the bail agent, the surety, or the depositor of money or
27 property, any of whom may appear in person or through an
28 attorney. The court, in its discretion, may require that the moving
29 party provide 10 days prior notice to the applicable prosecuting
30 agency, as a condition precedent to granting the motion.

31 *SEC. 6. Section 1309 is added to the Penal Code, to read:*

32 *1309. Upon motion, the court may award a bail agent or*
33 *surety company up to 100 percent of bail summary judgment*
34 *paid since January 1, 1998, if it can be shown by affidavit that*
35 *the surety or its’s agents secured the defendant’s return to*
36 *custody, or if the defendant is returned to custody prior to*
37 *January 1, 2008, after summary judgment has been paid.*

38 ~~SEC. 5.~~

39 *SEC. 7.* The provisions of this bill are severable. If any
40 provision of this bill or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

O