

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0508.03 Debbie Haskins x2045

HOUSE BILL 17-1369

HOUSE SPONSORSHIP

Pabon,

SENATE SPONSORSHIP

Marble,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING BOND PROCEDURES FOR PERSONS NOT APPEARING IN**
102 **COURT DUE TO IMMIGRATION-RELATED ISSUES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill is known as the "Bond Surety Protection Act".

The bill changes what happens with bonds posted for a defendant's appearance if a defendant is determined to be illegally present in the country and doesn't appear in court due to being removed from the country. Instead of forfeiture of the bond, a compensated surety who posted bond or a bail bonding agent who posted bond, or a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 10, 2017

SENATE
2nd Reading Unamended
May 9, 2017

HOUSE
Amended 3rd Reading
May 8, 2017

HOUSE
Amended 2nd Reading
May 5, 2017

noncompensated surety, such as a family member or friend, who executed a bail bond for a defendant, is exonerated from liability on the bond if the compensated surety or the noncompensated surety provides satisfactory evidence to the court that the defendant has been removed from the country. The bill requires the court to exonerate the bail bond if all of the following occur:

- ! The compensated or noncompensated surety files a motion requesting exoneration of the bail bond;
- ! The compensated or noncompensated surety files an affidavit along with the motion describing with particularity how the surety came to know that the defendant was removed from the United States, including the date of removal, if known, and the name of the person and contact information of the person who provided that information, if known; and
- ! The district attorney does not object.

The bill repeals current law that requires notification of people or sureties that their bond or fees will be forfeited if the defendant is removed from the country. On and after the effective date of the bill, a law enforcement agency holding a person charged with a criminal offense is prohibited from notifying the defendant's bail bonding agent or noncompensated surety before the bond is posted that his or her bond or fees will be forfeited if the defendant is removed from the country, and law enforcement officers are prohibited from asking a defendant or a person other than a bail bonding agent to execute a waiver that states that he or she understands that the bond or fees shall be forfeited if the defendant is removed from the country. A bail bonding agent shall not communicate to a defendant that his or her bond fees shall be forfeited if the defendant is removed from the country.

The bill repeals current law regarding the crediting of revenue from forfeited bonds into the county jail assistance fund. The bill directs the state treasurer to transfer the balance remaining in the county jail assistance fund to the general fund and then abolishes and repeals the county jail assistance fund.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** This act is known as the "Bond Surety
3 Protection Act".

4 **SECTION 2.** In Colorado Revised Statutes, 16-4-110, **add** (1)(f)
5 as follows:

1 **16-4-110. Exoneration from bond liability.** (1) Any person
2 executing a bail bond as principal or as surety shall be exonerated as
3 follows:

4 (f) (I) WHEN THE SURETY PROVIDES SATISFACTORY EVIDENCE TO
5 THE COURT THAT THE DEFENDANT HAS BEEN REMOVED FROM THE
6 COUNTRY. THE COURT SHALL EXONERATE THE BAIL BOND IF ALL OF THE
7 FOLLOWING OCCUR:

8 (A) THE SURETY FILES A MOTION REQUESTING EXONERATION OF
9 THE BAIL BOND;

10 (B) THE SURETY FILES AN AFFIDAVIT ALONG WITH THE MOTION
11 STATING THAT THE SURETY HAS RECEIVED INFORMATION FROM THE
12 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED
13 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, OR A FOREIGN
14 CONSULATE THAT THE DEFENDANT HAS BEEN DETAINED OR REMOVED
15 FROM THE UNITED STATES. IF THE SURETY IS UNABLE TO OBTAIN SUCH
16 INFORMATION FROM THE ABOVE SOURCES, THE SURETY MUST FILE AN
17 AFFIDAVIT THAT IS SIGNED UNDER PENALTY OF PERJURY BY A PERSON
18 WITH PERSONAL KNOWLEDGE THAT THE DEFENDANT HAS BEEN DETAINED
19 OR REMOVED FROM THE UNITED STATES.

20 (C) THE DISTRICT ATTORNEY DOES NOT OBJECT.

21 (II) IF THE COURT EXONERATES THE LIABILITY ON THE BAIL BOND
22 PURSUANT TO SUBSECTION (1)(f)(I) OF THIS SECTION AND THE BOND
23 PREMIUM HAS BEEN PAID, ANY COLLATERAL SECURING THE BAIL BOND IS
24 RELEASED.

25 **SECTION 3.** In Colorado Revised Statutes, 16-4-114, **add**
26 (5)(b)(VI) and (5)(b)(VII) as follows:

27 **16-4-114. Enforcement procedures for compensated sureties**

1 - **definitions.** (5) Liability of bond obligors on bonds issued by
2 compensated sureties may be enforced, without the necessity of an
3 independent action, as follows:

4 (b) (VI) A COMPENSATED SURETY SHALL BE EXONERATED FROM
5 LIABILITY UPON THE BOND WHEN THE SURETY PROVIDES SATISFACTORY
6 EVIDENCE TO THE COURT THAT THE DEFENDANT HAS BEEN REMOVED FROM
7 THE COUNTRY PURSUANT ACTION BY A FEDERAL IMMIGRATION AGENCY
8 WHILE ON BOND. THE COURT SHALL EXONERATE THE BAIL BOND IF ALL OF
9 THE FOLLOWING OCCUR:

10 (A) THE COMPENSATED SURETY FILES A MOTION REQUESTING
11 EXONERATION OF THE BAIL BOND;

12 (B) THE COMPENSATED SURETY FILES AN AFFIDAVIT ALONG WITH
13 THE MOTION STATING THAT THE COMPENSATED SURETY HAS RECEIVED
14 INFORMATION FROM THE UNITED STATES DEPARTMENT OF HOMELAND
15 SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS
16 ENFORCEMENT, OR A FOREIGN CONSULATE THAT THE DEFENDANT HAS
17 BEEN DETAINED OR REMOVED FROM THE UNITED STATES. IF THE
18 COMPENSATED SURETY IS UNABLE TO OBTAIN SUCH INFORMATION FROM
19 THE ABOVE SOURCES, THE COMPENSATED SURETY MUST FILE AN AFFIDAVIT
20 THAT IS SIGNED UNDER PENALTY OF PERJURY BY A PERSON WITH PERSONAL
21 KNOWLEDGE THAT THE DEFENDANT HAS BEEN DETAINED OR REMOVED
22 FROM THE UNITED STATES.

23 (C) THE DISTRICT ATTORNEY DOES NOT OBJECT.

24 (VII) IF THE COURT EXONERATES THE LIABILITY ON THE BAIL BOND
25 PURSUANT TO SUBSECTION (5)(b)(VI) OF THIS SECTION AND THE BOND
26 PREMIUM HAS BEEN PAID, ANY COLLATERAL SECURING THE BAIL BOND IS
27 RELEASED.

1 **SECTION 4.** In Colorado Revised Statutes, **repeal and reenact,**
2 **with amendments,** 16-3-503 as follows:

3 **16-3-503. Bonds for persons with immigration-related issues.**

4 ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A LAW
5 ENFORCEMENT AGENCY HOLDING A DEFENDANT CHARGED WITH A
6 CRIMINAL OFFENSE SHALL NOT NOTIFY THE DEFENDANT'S BAIL BONDING
7 AGENT OR A NONCOMPENSATED SURETY BEFORE THE BOND IS POSTED
8 THAT HIS OR HER BOND OR FEES MAY BE FORFEITED IF THE DEFENDANT IS
9 REMOVED FROM THE COUNTRY. ON AND AFTER THE EFFECTIVE DATE OF
10 THIS SECTION, A LAW ENFORCEMENT OFFICER SHALL NO LONGER ASK A
11 DEFENDANT OR A PERSON OTHER THAN A BAIL BONDING AGENT TO
12 EXECUTE A WAIVER PRIOR TO POSTING A BOND FOR A PERSON CHARGED
13 WITH A CRIMINAL OFFENSE THAT STATES THAT HE OR SHE UNDERSTANDS
14 THAT THE BOND OR FEES SHALL BE FORFEITED IF THE DEFENDANT IS
15 REMOVED FROM THE COUNTRY. A BAIL BONDING AGENT SHALL NOT
16 COMMUNICATE TO A DEFENDANT THAT HIS OR HER BOND OR FEES SHALL
17 BE FORFEITED IF THE DEFENDANT IS REMOVED FROM THE COUNTRY.

18 **SECTION 5.** In Colorado Revised Statutes, **amend** 17-26-137 as
19 follows:

20 **17-26-137. County jail assistance fund - repeal.** (1) The
21 ~~moneys~~ MONEY collected pursuant to section 16-3-503 (1) ~~C.R.S.~~, shall
22 be transmitted to the state treasurer, who shall credit the same to the
23 county jail assistance fund, which fund is hereby created and referred to
24 in this section as the "fund". The ~~moneys~~ MONEY in the fund shall be
25 subject to annual appropriation by the general assembly to the department
26 of corrections for allocation to counties for the maintenance and operation
27 of county jails. Any ~~moneys~~ MONEY in the fund not expended for the

1 purpose of this section may be invested by the state treasurer as provided
2 by law. All interest and income derived from the investment and deposit
3 of ~~moneys~~ MONEY in the fund shall be credited to the fund. ~~Any~~
4 ~~unexpended and unencumbered moneys~~ THE STATE TREASURER SHALL
5 TRANSFER ALL UNEXPENDED AND UNENCUMBERED MONEY remaining in
6 the fund ~~at the end of a fiscal year shall remain in the fund and shall not~~
7 ~~be credited or transferred~~ ON JUNE 30, 2017, to the general fund, ~~or~~
8 ~~another fund~~ AND THE FUND IS ABOLISHED.

9 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2017.

10 **SECTION 6. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.