
Sunset Evaluation Report: Bail Bond Agents

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 92-16
November 1992

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report evaluates the regulation of bail bond agents under Sections 804-61 and 804-62, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate bail bond agents to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation intended to implement our recommendations.

We acknowledge the cooperation of state and county officials and representatives of the bail bond industry whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of bail bond agents under Sections 804-61 and 804-62, HRS, complies with policies for occupational licensing in the Sunset Law.

Background on Bail Bond Agents

Bail is the guarantee of a sum of money to the court to ensure that a defendant in a criminal case will appear in court when scheduled. Some defendants must make bail to obtain release from the custody of the county police or the state Department of Public Safety while awaiting court proceedings. Generally, a judge or law enforcement officer grants release on bail and sets the bail amount. Those unable or unwilling to make the full amount of the bail may use a bail bond agent to post bail for them. Usually for 10 percent of the full bail amount, the bail bond agent agrees to post a bail bond and act as surety, or guarantor, on the bail. If the defendant fails to show up in court, the bail bond agent forfeits the full amount of the bail to the court.

There are three bail bond companies in Hawaii, all based on Oahu. They employ a total of about 10 people; at least two of them are also agents of surety insurance companies.

Regulation in Hawaii

In 1931 the Territorial Legislature required the counties to license anyone who for compensation acted as surety on a bail bond.¹ The annual license fee was \$10 and compensation was limited to 5 percent of the bond (but not less than \$5).

In 1990 the Legislature divested the counties of responsibility for bail bond agents and several other licensing programs which it viewed as “outdated and unnecessary.”² It transferred the bail bond licensing sections from Chapter 445, HRS, the county licensing law, to

Chapter 804, HRS, the law which governs bail and other types of release from custody.³ In transferring the sections the Legislature did not designate an agency to do the licensing.

Currently Chapter 804 requires bail bond agents to pay an annual license fee of \$10. Persons authorized to act as sureties under Chapter 431, HRS, the Insurance Law, are exempt. The bail bond agent's compensation is limited to 10 percent of the bond but it need not be less than \$10. Bail bond agents who overcharge must give up their license for a year and may be fined up to \$250 for licensing violations. The law also governs the amount and availability of bail, conditions of release, qualifications of sureties, bail forfeiture, and other matters.⁴ In addition, the law governs "bonds to keep the peace," or peace bonds, which district court judges may require from persons who have threatened to commit an offense against the person or property of another.⁵

Sunset Evaluation

In 1991 the State Ombudsman received an inquiry from a person who wished to set up a bail bond business but who could not find a licensing agency. The Ombudsman recommended that the Legislature clarify which agency is responsible.⁶

In 1992, Senate Bill No. 2237 proposed to put the Department of Commerce and Consumer Affairs in charge of regulating bail bond businesses. The department and the Professional Bail Agents Association of Hawaii testified that a sunset evaluation should be performed first.⁷ The bill was revised and became Act 149, SLH 1992, which placed Sections 804-61 and 804-62 on the sunset schedule with a repeal date of December 31, 1993. These sections cover both bail bonds and peace bonds, but the request for a sunset evaluation focused on bail bonds.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of bail bond agents complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate this occupation to protect the health, safety and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and

4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on bail bond agents and their regulation and examined applicable statutes and rules. We interviewed representatives of the bail bond industry, the Judiciary, the Department of the Attorney General, the Department of Commerce and Consumer Affairs (including the Insurance Division), the Department of Public Safety, the Public Defender, and the Prosecuting Attorney and Police Department of the City and County of Honolulu.

Our work was performed from May 1992 through September 1992 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

This chapter presents our findings and recommendations on the need to regulate bail bond agents. We conclude that a licensing program is not necessary.

Summary of Findings

1. Currently no licensing program is in effect for bail bond agents.
2. No evidence exists that bail bond agents are causing sufficient harm to consumers to warrant creating a licensing program.

No Licensing Program Exists

Bail bond agents have not been licensed in Hawaii since 1990 when the Legislature removed the licensing program from the counties. The \$10 license fee remains in the statutes, but no agency is responsible for collecting it or performing other licensing duties. License application forms are not available and bail bond agents have no place to pay the fee.

The courts require bail bond agents to follow certain procedures. For instance, the First Circuit Court has authorized Hawaii's three bail bond companies to use their own seals to certify that the copy of the bail bond presented to the Department of Public Safety for release of the defendant is a true and correct copy of the original bond filed with the court.¹ Examples of the seals are included in a loose-leaf bail bond manual distributed by the court to those involved with bail bonds.² The court procedure is designed to improve the efficiency and uniformity of the bail bond process in the First Circuit.

Some provisions in the Insurance Law may apply to the bail bond industry, but the law does not establish a specific licensing program for bail bond agents. The Insurance Law defines surety insurance to include bail bond insurance.³ Insurance companies that back bail bond companies are licensed as surety insurers by the Insurance Division of the Department of Commerce and Consumer Affairs. The individuals who head two of Hawaii's bail bond companies are licensed as "general agents" by the Insurance Division.

Consumers Have Not Been Harmed

We found no evidence that bail bond agents have harmed consumers of bail bond services, that is, the defendants who seek release from custody. The City and County of Honolulu did not have records of complaints and a county official said that there had been no complaints about licensees.

The primary concern has been the delay or failure of some bail bond agents to pay to the State the forfeited bail amount when the defendant does not show up in court.

Problems in collecting

In a 1984 study of bail forfeitures, the Hawaii Crime Commission documented instances of delayed or nonpayment of forfeited bonds.⁴ The commission also expressed concern about the financial stability of some bail bond companies and their ability to pay bail amounts owed.

But the State does not need to be protected as would consumers and there are laws designed to ensure payment.

In 1987, the laws were amended to foster tighter regulation of sureties. For example, Chapter 804 requires the court to consider the sufficiency of the sureties' finances and authorizes the officer receiving the bail to compel the surety to prove sufficiency. In addition, the chapter requires the court to enter judgment against the surety immediately upon forfeiture and to ensure that the judgment be carried out within 30 days. These statutes protect the State without the need for licensing.

Licensing Is Not Warranted

Bail bond agents could take advantage of defendants who are at a disadvantage because they are confined, want immediate release from custody, and lack knowledge of bail. Bail bond agents could impose arbitrary fees. But licensing is not the solution and, contrary to policies in the Sunset Law, it could restrict entry into the profession. Fewer than half of the states license bail bond agents. Legislators could protect consumers from arbitrary fees simply by modifying Hawaii's bail statutes.

Preventing additional fees

Section 804-62 protects defendants from arbitrary or excessive fees by limiting the bail bond agent's compensation to 10 percent of the bail. We were informed that bail bond agents have sometimes charged defendants fees greater than the 10 percent. They would add a premium when the defendant's case was still active after a year. A sample bail contract between a bail bond company and a defendant appeared to allow

for such additional fees. However, bail bond agents have agreed with the courts, prosecutor's office, and the Department of Public Safety to end the practice of charging additional fees.

To further strengthen this agreement, Section 804-62 could be amended to make violating the fee limit an unfair or deceptive act or practice under Section 480-2, HRS. The attorney general or the director of the Office of Consumer Protection could then pursue civil fines or injunctions under Section 480-3.1 or Section 480-15. Section 804-62 could also be amended to make it clear that bond agents may charge the 10 percent fee one time only.

Restrictive licensing

The Professional Bail Agents Association of Hawaii supports licensing of all bail bond agents. The association's position would restrict entry into the occupation.

Among other things, the association believes that bail bond agents who have done business in Hawaii for less than ten years should maintain a license bond of \$100,000 to guarantee payments relating to bail bond transactions, particularly bail forfeitures.⁵

A license bond of this size would make it difficult for new businesses to enter the bail bond market. In addition, it is arbitrary and unfair to exempt established businesses from the requirement.

Amendments Are Needed

Licensing of bail bond agents is not needed; therefore Section 804-61, HRS, which requires payment of a licensing fee, should be repealed.

Because our recommendations would delete Section 804-61, which imposes a licensing fee, and the parts of Section 804-62 which are linked to licensing, it would be appropriate to remove both Section 804-61 and Section 804-62 from the Sunset Law.

Impact on peace bonds

Sections 804-61 and 804-62 also apply to persons acting as sureties on "bonds to keep the peace," or peace bonds, which district court judges may require from persons who have threatened others.⁶ Our recommendations would also eliminate the licensing fee for peace bond sureties and bring them under Section 480-2, HRS, if they charge excessive fees. The effects of this change appear negligible, since peace bonds are not being used today.

Recommendations

The Legislature should amend the Hawaii Revised Statutes in the following manner:

1. Repeal Sections 804-61 and 804-62(b), HRS.
2. Amend Section 804-62(a), HRS to make violating this provision an unfair or deceptive act or practice under Section 480-2, HRS and to make it clear that the 10 percent fee may be charged one time only.
3. Remove Sections 804-61 and 804-62, HRS from the Sunset Law.

Notes

Chapter 1

1. Act 35, Laws of the Territory of Hawaii, Regular Session 1931.
2. Section 1 of Act 164, SLH 1990.
3. Sections 3 and 6 of Act 164, SLH 1990.
4. Part I of Chapter 804, HRS.
5. Part II of Chapter 804, HRS.
6. Hawaii, Ombudsman, *Report of the Ombudsman for the Period July 1, 1990 - June 30, 1991*, Honolulu, October 1991, p. 10.
7. Testimonies on Senate Bill No. 2237 submitted by (1) the Department of Commerce and Consumer Affairs, State of Hawaii, and (2) James W. Lindblad, President, Professional Bail Agents Association of Hawaii, to the Honorable Donna R. Ikeda, Chair, Senate Committee on Consumer Protection and Business Regulation, February 10, 1992.

Chapter 2

1. Memorandum to Criminal Divisions et al. from Wendell K. Huddy, Criminal Administrative Judge, First Circuit Court, Subject: Certification of Bail Bonds by Bail Bond Companies, May 6, 1991.
2. *Bail Bond Procedures Manual, District and Circuit Courts, State of Hawaii*, revised June 1991.
3. Section 431:1-210, HRS.
4. Hawaii Crime Commission, *Study of Bail Forfeitures in Hawaii*, Honolulu, March 1984, pp. 16-29.
5. Letter to J. James McMahon, Assistant Auditor and Ben G. Forsland, Legislative Analyst, from Stuart P. Shapiro, Esq., June 17, 1992.
6. Part II, Chapter 804, HRS.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on October 2, 1992. A copy of the transmittal letter to the department is included as Attachment 1. The department did not submit a response.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
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MARION M. HIGA
State Auditor

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October 2, 1992

C O P Y

The Honorable Robert A. Alm, Director
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Alm:

Enclosed for your information are three copies each, numbered 6 to 8 of our draft reports, *Sunset Evaluation Update: Massage*, *Sunset Evaluation Update: Osteopathy*, *Sunset Evaluation Update: Podiatrists*, *Sunset Evaluation Report: Physical Therapy*, *Sunset Evaluation Report: Bail Bond Agents*. We ask that you telephone us by Tuesday, October 6, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the reports, please submit them no later than Monday, November 2, 1992.

The respective boards, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of the draft reports.

Since the reports are not in their final form and changes may be made to them, access to the reports should be restricted to those assisting you in preparing your response. Public release of the reports will be made solely by our office and only after the reports are published in their final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

A BILL FOR AN ACT

RELATING TO BAIL BOND AGENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The following chapters and sections are hereby
4 repealed effective December 31, 1993:

5 (1) Chapter 452 (Board of Massage)

6 (2) Chapter 453 (Board of Medical Examiners)

7 (3) Chapter 460 (Board of Osteopathic Examiners)

8 (4) Chapter 461J (Board of Physical Therapy)

9 (5) Chapter 463E (Podiatry)

10 (6) Chapter 514E (Time Sharing Plans)

11 [(7) Sections 804-61 and 804-62]"

12 SECTION 2. Section 804-62, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[[]§804-62[]] Limit of compensation; penalty. (a) The
15 amount of compensation which may be collected on any bail bond or
16 bond to keep the peace by one or more persons acting as sureties
17 thereon shall not exceed a one time only fee of ten per cent of
18 the amount thereof but need not be less than \$10 in any event.

1 (b) Every person [holding a license to act as surety on any
2 bail bond or bond to keep the peace] who violates this section
3 shall [be fined not more than \$250 and shall forfeit the license
4 and shall not be entitled to receive a similar license for a
5 period of one year thereafter.] have committed an unfair trade
6 practice under section 480-2."

7 SECTION 3. Section 804-61, Hawaii Revised Statutes, is
8 repealed.

9 ["[~~§804-61~~] Fee; penalty. (a) Every person who, for
10 compensation, acts as surety on any bail bond or bond to keep the
11 peace shall pay an annual license fee of \$10; provided that this
12 section shall not apply to any person authorized to act as surety
13 under chapter 431.

14 (b) Every person who violates this section shall be fined
15 not more than \$250."]

16 SECTION 4. Statutory material to be repealed is bracketed.
17 New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

19

20

INTRODUCED BY: _____