

Regular Session, 2014

SENATE BILL NO. 439

BY SENATOR CLAITOR

CRIMINAL PROCEDURE. Provides relative to bail. (1/1/15)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact Code of Criminal Procedure Articles 311, 322(A) and (C), 345, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8, and 349.9, R.S. 15:85, and R.S. 22:1441(A), (C)(2), and (D), relative to bail; to provide relative to definitions; to provide relative to authority to fix bail; to provide relative to surrender of the defendant; to provide relative to judgments of bond forfeiture and appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 311, 322(A) and (C), 345, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8, and 349.9 are hereby amended and reenacted to read as follows:

Art. 311. ~~Bail defined~~ **Definitions**

**In this Title:**

**(1) "Bail"** is the security given by a person to assure his **a defendant's** appearance before the proper court whenever required.

**(2) "Appearance" is a personal appearance before the court, or a designee thereof, before which the charges are pending.**



1 **to** his counsel. A commercial surety shall inscribe its proper mailing address on the  
 2 face of the power of attorney used to execute the bond. The agent or bondsman  
 3 posting the bond shall write his proper mailing address under his signature. A bail  
 4 bond shall not be set aside because of the invalidity of the information required by  
 5 this Article or for the failure to include the information required by the provisions  
 6 of this Article.

7 \* \* \*

8 C. By signing the bail bond, the defendant and his surety waive any right to  
 9 notice, **including actual notice under Code of Criminal Procedure Article**  
 10 **579(A)(3),** except that **the notice** provided for in Articles 344 ~~and 349.3~~ **349.1,**  
 11 **349.2, and 349.6.**

12 \* \* \*

13 Art. 345. ~~Surrender of defendant~~ **Discharge of the obligation**

14 A. ~~A surety may surrender the defendant or the defendant may surrender~~  
 15 ~~himself, in open court or to the officer charged with his detention, at any time prior~~  
 16 ~~to forfeiture or within the time allowed by law for setting aside a judgment of~~  
 17 ~~forfeiture of the bail bond~~ **A surety may surrender the defendant at any time**  
 18 **except as otherwise provided by law.** For the purpose of surrendering the  
 19 defendant, the surety may arrest him. Upon surrender of the defendant, the officer  
 20 shall ~~detain the defendant in his custody as upon the original commitment and shall~~  
 21 ~~acknowledge the surrender by a certificate signed by him and delivered to the surety.~~  
 22 ~~The officer shall retain and forward a copy of the certificate to the court. After~~  
 23 ~~compliance with the provisions of Paragraph F of this Article, the surety shall be~~  
 24 ~~fully and finally discharged and relieved, as provided for in Paragraphs C and D of~~  
 25 ~~this Article, of all obligations under the bond~~ **retain and forward a copy of the**  
 26 **certificate to the court. Upon verified surrender of the defendant prior to one**  
 27 **hundred eighty days after the notice of warrant of arrest was sent, the surety**  
 28 **shall be fully and finally discharged and relieved of all obligations under the**  
 29 **bond.**

1           B. ~~If the defendant is incarcerated by the officer originally charged with his~~  
2 ~~detention at any time prior to forfeiture or within the time allowed by law for setting~~  
3 ~~aside a judgment for forfeiture of the bail bond, the surety may apply for and receive~~  
4 ~~from any officer in charge of any facility in the state of Louisiana or a foreign~~  
5 ~~jurisdiction charged with the detention of the defendant a letter verifying that the~~  
6 ~~defendant is incarcerated, but only after the surety verifies to the satisfaction of the~~  
7 ~~officer charged with the detention of the defendant as to the identity of the defendant.~~  
8 ~~After compliance with the provisions of Paragraph F of this Article, the surety shall~~  
9 ~~be fully and finally discharged and relieved, as provided for in Paragraphs C and D~~  
10 ~~of this Article, of all obligations under the bond~~ **A surety may constructively**  
11 **surrender the defendant within one hundred eighty days of when the notice of**  
12 **warrant of arrest was sent. After the constructive surrender of the defendant,**  
13 **the surety shall be fully and finally discharged and relieved of all obligations**  
14 **under the bail bond.**

15           C. ~~When a surety receives either a certificate of surrender provided for in~~  
16 ~~Paragraph A of this Article or a letter of verification as provided for in Paragraph B~~  
17 ~~of this Article, the surety shall pay a fee of twenty-five dollars to the officer charged~~  
18 ~~with the defendant's detention for recalling the capias, accepting the surrender or~~  
19 ~~verifying the incarceration, processing the paperwork, and giving the surety a~~  
20 ~~certificate of surrender or a letter of verification of incarceration issued pursuant to~~  
21 ~~this Article after compliance with the provisions of Paragraph F of this Article~~  
22 ~~releasing him from his obligation under the defendant's bond.~~

23           D. ~~If during the period allowed for the surrender of the defendant, the~~  
24 ~~defendant is found to be incarcerated in another parish of the state of Louisiana or~~  
25 ~~a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if all of the~~  
26 ~~following conditions are met:~~

27           (1) ~~The defendant or his sureties file a motion within the period allowed for~~  
28 ~~the surrender of the defendant. The motion shall be heard summarily.~~

29           (2) ~~The sureties of the defendant provide the court adequate proof of~~

1       ~~incarceration of the defendant, or the officer originally charged with his detention~~  
2       ~~verifies his incarceration. A letter of incarceration issued pursuant to this Article~~  
3       ~~verifying that the defendant was incarcerated within the period allowed for the~~  
4       ~~surrender of the defendant at the time the defendant or the surety files the motion,~~  
5       ~~shall be deemed adequate proof of the incarceration of the defendant.~~

6               ~~(3) The defendant's sureties pay the officer originally charged with the~~  
7       ~~defendant's detention, the reasonable cost of returning the defendant to the officer~~  
8       ~~originally charged with the defendant's detention prior to the defendant's return.~~

9               E. C. ~~At any time prior to forfeiture or within the time allowed by law for~~  
10       ~~setting aside a judgment for forfeiture of the bail bond~~ **the defendant's failure to**  
11       ~~appear or within one hundred eighty days after the notice of warrant of arrest~~  
12       ~~is sent,~~ the surety may present to the court a certificate of death naming the  
13       defendant as the deceased party. The certificate shall be under seal of the authority  
14       confirming the defendant's death. Thereafter, the surety shall be fully and finally  
15       discharged and relieved of any and all obligation under the bond.

16              F. ~~When the defendant has been surrendered in conformity with this Article~~  
17       ~~or a letter of verification of incarceration has been issued to the surety as provided~~  
18       ~~for in this Article, the court shall, upon presentation of the certificate of surrender or~~  
19       ~~the letter of verification of incarceration, order that the surety be exonerated from~~  
20       ~~liability on his bail undertaking and shall order any judgment of forfeiture set aside.~~

21              **D. At any time during which there is an active arrest warrant in the**  
22       ~~proceeding for which the bond was posted, the surety or bail bond producer~~  
23       ~~who posted the bond may file an affidavit requesting the defendant be~~  
24       ~~remanded and surrendered upon his appearance before the court where the~~  
25       ~~charges are pending. The affidavit shall meet all the requirements set forth in~~  
26       ~~R.S. 22:1585 and shall be filed before the court in which the charges are~~  
27       ~~pending. A copy of the affidavit shall be provided to the prosecuting attorney.~~  
28       **Upon the appearance of the defendant within one hundred eighty days of the**  
29       ~~date on which the notice of warrant of arrest was sent, the court may either~~

1 **grant or deny the relief requested. If the court grants the relief requested, then**  
2 **it shall remand the defendant and relieve the surety of all obligations under the**  
3 **bond. If the court denies the relief requested, then the surety may seek**  
4 **supervisory review.**

5 G. E. During the period provided for surrendering the defendant **At any time**  
6 **after the defendant's failure to appear and the issuance of the warrant of arrest,**  
7 the surety may request that the officer originally charged with the detention of a  
8 felony defendant place the name of the felony defendant into the National Crime  
9 Information Center registry. The surety shall pay to that officer a fee of twenty-five  
10 dollars for processing the placement. If, after payment of the twenty-five-dollar fee,  
11 the name of the defendant is removed from the National Crime Information Center  
12 registry without cause during the period provided for surrendering the defendant, ~~the~~  
13 ~~surety shall be relieved of all obligations under the bond~~ **the period for filing a rule**  
14 **to show cause under Code of Criminal Procedure Article 349.2 shall be**  
15 **suspended until the name of the defendant is returned to the registry.**

16 H. F. In the case of any fee required under the provisions of this Article, the  
17 officer charged with the defendant's detention shall provide the surety with a receipt  
18 indicating the amount of the fee collected, the name of the defendant, the purpose of  
19 the fee collected, the date and time the defendant was surrendered, the name of the  
20 person from whom the fee was collected, and information sufficient to identify any  
21 applicable bond.

22 ~~I. In addition to and notwithstanding any other provision of law, a surety may~~  
23 ~~seek an extension of time to surrender a defendant, or have the judgment of bond~~  
24 ~~forfeiture set aside by filing a motion in the criminal court of record and after~~  
25 ~~contradictory hearing with the district attorney and with proof satisfactory to the~~  
26 ~~court that a fortuitous event has occurred and that the event has made it impossible~~  
27 ~~to perform as required under the contract. A motion seeking relief pursuant to this~~  
28 ~~Paragraph must be filed within three hundred sixty-six days from the date of the~~  
29 ~~fortuitous event, excluding legal delays. The court in its discretion may do any of the~~

1 following:

2 (1) ~~Set aside the forfeiture or grant the nullity.~~

3 (2) ~~Grant an extension of up to three hundred sixty-six days from the~~  
4 ~~expiration of the initial time period allowed for the surrender of the defendant from~~  
5 ~~the date of the mailing of proper notice of bond forfeiture. If the court grants that~~  
6 ~~extension, judicial interest shall be suspended during that additional time period.~~

7 (3) ~~Deny the relief.~~

8 J. ~~Regarding bail bond forfeitures for which the notices of bond forfeiture~~  
9 ~~judgments were mailed between February 28, 2005, and September 21, 2005,~~  
10 ~~inclusive, in addition to and notwithstanding any other provision of law, the~~  
11 ~~defendant or the surety may seek an extension of time to surrender a defendant or to~~  
12 ~~have a judgment of bond forfeiture set aside by filing a motion in the criminal court~~  
13 ~~record and after contradictory hearing with the district attorney and with proof~~  
14 ~~satisfactory to the discretion of the court that after reasonable effort to recover the~~  
15 ~~wanted fugitive, the location and return of the wanted fugitive was made impossible~~  
16 ~~by damage sustained during and immediately following Hurricane Katrina or~~  
17 ~~Hurricane Rita. Such motion must be filed within three hundred sixty-six days of the~~  
18 ~~date of the storm, the effect of which gives rise to the request for relief excluding~~  
19 ~~legal delays. A motion seeking relief pursuant to this Paragraph must be filed within~~  
20 ~~three hundred sixty-six days from the date of the fortuitous event, excluding legal~~  
21 ~~delays. The court in its discretion may do any of the following:~~

22 (1) ~~Set aside the forfeiture or grant the nullity.~~

23 (2) ~~Grant an extension of time up to three hundred sixty-six days from the~~  
24 ~~expiration of the initial time period allowed for the surrender of the defendant from~~  
25 ~~the date of the mailing of proper notice of bond forfeiture. If the court grants that~~  
26 ~~extension, judicial interest shall be suspended during that additional time period.~~

27 (3) ~~Deny the relief.~~

28 \* \* \*

29 Art. 349. Forfeiture procedure **Failure to appear; issuance of arrest warrant**

1           ~~A. A bond that secures the appearance of a person before a court in the state~~  
2           ~~of Louisiana shall be forfeited and collected as provided by law.~~

3           ~~B. The court shall immediately issue a warrant for the arrest of the person~~  
4           ~~failing to appear and order a judgment decreeing the forfeiture of the bond and~~  
5           ~~against the defendant and his sureties in solido for the full amount of the bond.~~

6           ~~C. A bail agent who represents the surety as an insurance agent shall not be~~  
7           ~~solidarily liable for the forfeiture of a bond against the defendant and his sureties.~~  
8           ~~In the event that a bail agent who represents the surety as an insurance agent is held~~  
9           ~~solidarily liable, then that bail agent may request to be released from the judgment,~~  
10           ~~and the release of the bail agent shall have no effect on the judgment decreeing the~~  
11           ~~forfeiture of the bond against the defendant and his sureties.~~

12           **If at the time fixed for appearance a defendant who was properly noticed**  
13           **fails to appear as required by the court, the court, on its own motion or on**  
14           **motion of the prosecuting attorney, shall immediately and forthwith issue a**  
15           **warrant for the arrest of the defendant.**

16           Art. 349.1. Failure to appear, issuance of arrest warrant **Notice of warrant of arrest**

17           ~~If at the time fixed for appearance the defendant fails to appear as required~~  
18           ~~by the court, the judge may, or shall on motion of the prosecuting attorney, issue a~~  
19           ~~warrant for the arrest of the defendant.~~

20           **After a warrant of arrest is issued, the clerk of court shall, within sixty**  
21           **days unless good cause is shown, send a "notice of warrant of arrest" to the**  
22           **prosecuting attorney. The notice shall also be sent by United States mail or**  
23           **electronic means to the defendant, the agent or bondsman, if any, and the**  
24           **personal surety. Notice shall be sent by electronic means or certified mail to the**  
25           **commercial surety. All notices shall be sent to the addresses provided pursuant**  
26           **to Code of Criminal Procedure Article 322 or an address registered with the**  
27           **Department of Insurance. The notice to the commercial surety shall include the**  
28           **power of attorney number used to execute the bail bond, but failure to include**  
29           **the power of attorney number shall not affect the validity or enforcement of any**





1           ~~commercial surety, and the commercial surety at the addresses designated in Article~~  
2           ~~322 or an address registered with the Louisiana Department of Insurance. Notice to~~  
3           ~~the commercial surety shall include the power of attorney number used to execute~~  
4           ~~the bond without which the bond obligation of the commercial surety shall be~~  
5           ~~suspended until the power of attorney number is supplied, provided the commercial~~  
6           ~~surety provides notice to the clerk of court who mailed the notice to the surety of the~~  
7           ~~failure to include such number in the notice by certified mail not later than thirty~~  
8           ~~days following receipt of notice of the judgment. If the power of attorney number is~~  
9           ~~not provided to the commercial surety within thirty days after the date of receipt by~~  
10          ~~the clerk of court of the notice that it was not included in the notice of the judgment,~~  
11          ~~the commercial surety shall be released from the bond obligation.~~

12                   ~~(2) The defendant shall reimburse the clerk of court for postage and other~~  
13                   ~~costs incurred by the clerk to send the notice required in Paragraph A of this Article.~~

14                   ~~B. After mailing the notice of the signing of the judgment of bond forfeiture,~~  
15                   ~~the clerk of court shall execute an affidavit of the mailing and place the affidavit and~~  
16                   ~~the return receipts in the record.~~

17                   ~~C. Failure to mail notice of the signing of the judgment within sixty days~~  
18                   ~~after the defendant fails to appear shall release the sureties of all obligations under~~  
19                   ~~the bond.~~

20                   **A. Upon proof at the contradictory hearing of the bail bond, the power**  
21                   **of attorney, if any, notice to the defendant and the surety as required by Code**  
22                   **of Criminal Procedure Article 349.1, and that more than one hundred eighty**  
23                   **days have passed since the notice of the warrant of arrest was sent, the court**  
24                   **shall forfeit the bail bond, and a judgment of bond forfeiture shall be entered.**  
25                   **The judgment of bond forfeiture shall be issued against the defendant and his**  
26                   **sureties in solido for the full amount of the bail. An exception of prematurity**  
27                   **may be filed to raise the issue that the period for obtaining a bond forfeiture**  
28                   **judgment has not run.**

29                   **B. A bail agent who represents the surety as an insurance agent shall not**

1 be solidarily liable for the judgment of bond forfeiture against the defendant  
 2 and his sureties. In the event that a bail agent who represents the surety as an  
 3 insurance agent is held solidarily liable, then the bail agent may request to be  
 4 released from the judgment, and the release of the bail agent shall have no effect  
 5 on the judgment decreeing the forfeiture of the bond against the defendant and  
 6 his sureties.

7 C. The judgment of bond forfeiture shall include the address and the last  
 8 four digits of the social security number of the defendant and the personal  
 9 sureties. A judgment of bond forfeiture shall not be set aside because of the  
 10 invalidity of the information required by the provisions of this Article or for the  
 11 failure to include the information required by this Article.

12 Art. 349.4. Recordation of judgment Interruption of the period for obtaining a  
 13 bond forfeiture judgment

14 ~~A. After mailing notice of the signing of the judgment of bond forfeiture, the~~  
 15 ~~district attorney shall cause the judgment to be recorded in every parish in which the~~  
 16 ~~recordation may be proper. Every such recordation shall be without cost and shall~~  
 17 ~~operate as a judicial mortgage against the defendant and all his sureties.~~

18 ~~B. Prior to recordation, the district attorney shall verify the inclusion of~~  
 19 ~~information on the judgment, namely, the address and the last four digits of the~~  
 20 ~~social security number for the defendant and his sureties. Third parties may rely upon~~  
 21 ~~the accuracy of the information required by the provisions of this Article for~~  
 22 ~~purposes of distinguishing the identity of the defendant and his sureties. Any~~  
 23 ~~judgment of bond forfeiture containing inaccurate information required by the~~  
 24 ~~provisions of this Article shall be deemed ineffective as a judicial mortgage to third~~  
 25 ~~parties who rely upon that information.~~

26 An appearance by the defendant shall interrupt the period for obtaining  
 27 a bond forfeiture judgment. An appearance by the defendant does not relieve  
 28 the surety of its bond obligations.

29 ~~Art. 349.5. Nullity actions, summary proceedings, and cumulative actions~~

1                                    Nonforfeiture situations

2                    A.~~(1) The defendant and his sureties shall be entitled to assert defenses and~~  
3                    ~~actions in nullity by use of summary proceedings in the criminal matter before the~~  
4                    ~~trial court that issued the judgment of bond forfeiture within sixty days after the date~~  
5                    ~~of mailing the notice of the signing of the judgment of bond forfeiture. Any summary~~  
6                    ~~proceeding brought by the defendant or his sureties within the sixty-day period shall~~  
7                    ~~be determined by the court within one hundred eighty days of the date of mailing the~~  
8                    ~~notice of the signing of the judgment of bond forfeiture.~~

9                    ~~(2) Nullity actions pursuant to Code of Civil Procedure Article 2001 et seq.~~  
10                   ~~not filed within the sixty days provided for filing summary proceedings shall be~~  
11                   ~~brought by the use of ordinary civil proceedings.~~

12                   B. ~~The defendant and his sureties shall be entitled to assert defenses pursuant~~  
13                   ~~to Articles 345 and 349.9 by use of summary proceedings in the criminal matter~~  
14                   ~~before the trial court that issued the judgment of bond forfeiture within one hundred~~  
15                   ~~eighty days after the date of mailing the notice of the signing of the judgment of~~  
16                   ~~bond forfeiture.~~

17                   C. ~~A surety, in an action in nullity or to set aside a bond forfeiture, may~~  
18                   ~~cumulate two or more cases that are similarly situated by the facts and legal issues~~  
19                   ~~as one cumulative action. The actions cumulated shall be mutually consistent and~~  
20                   ~~employ the same form of procedure. The action may be by summary proceedings in~~  
21                   ~~the section of the criminal court where those cases are pending, or by an ordinary~~  
22                   ~~civil proceeding when the action is within the jurisdiction of the court and in the~~  
23                   ~~proper venue. The surety has the burden of proving that the cumulation of the actions~~  
24                   ~~is appropriate and in the interest of justice.~~

25                   D. ~~If the court lacks jurisdiction or venue is improper as to one of the actions~~  
26                   ~~cumulated, that action shall be dismissed. If the cumulation is improper for any other~~  
27                   ~~reason, the court may do either of the following:~~

28                   ~~(1) Order separate trials or hearings of the actions.~~

29                   ~~(2) Order the moving party to elect which action shall proceed and to amend~~

1 the pleadings to delete all allegations relating to the discontinued action. The penalty  
2 for noncompliance with an order to amend is a dismissal of the entire proceeding.

3 **A. A judgment decreeing the forfeiture of a bail bond shall not be**  
4 **rendered if it is shown to the satisfaction of the court at the hearing on a rule to**  
5 **show cause, that the defendant, principal in the bond, failed to appear in court**  
6 **because of any of the following:**

7 **(1) The defendant was serving in the armed forces of the United States.**

8 **(2) The defendant was a member of the Louisiana National Guard called**  
9 **to duty pursuant to R.S. 29:7.**

10 **(3) The defendant was prevented from appearing due to state of**  
11 **emergency declared by the governor.**

12 **B. There shall be a rebuttable presumption that the calling of the**  
13 **defendant to duty pursuant to R.S. 29:7 prevented the defendant from attending**  
14 **court.**

15 Art. 349.6. Appeals **Notice of judgment**

16 A. The defendant and his sureties shall have the right to a suspensive appeal  
17 from the judgment of bond forfeiture, which shall be perfected within sixty days after  
18 the date of mailing the notice of the signing of the judgment. The security for the  
19 appeal shall be equal to the bail obligation.

20 B. The defendant and his sureties shall have the right to a devolutive appeal  
21 from the judgment of bond forfeiture, which shall be perfected within one hundred  
22 twenty days after the date of mailing the notice of the signing of the judgment.

23 C. All appeals shall be proper in the court having appellate jurisdiction over  
24 the court issuing the judgment of bond forfeiture.

25 **A. Notice of the signing of the judgment of bond forfeiture shall be**  
26 **mailed by the clerk of court to the counsel of record for each party, and to each**  
27 **party not represented by counsel, pursuant to Code of Civil Procedure Article**  
28 **1913.**

29 **B. The clerk shall file a certificate in the record showing the date on**

1 **which the notice of the signing of the judgment was mailed.**

2 Art. 349.7. Enforcement of judgment **Recordation of judgment**

3 ~~A.(1) No judgment of bond forfeiture rendered on or after August 15, 1997,~~  
4 ~~shall be enforced until after the expiration of one hundred ninety days after the date~~  
5 ~~of mailing the notice of the signing of the judgment of bond forfeiture for bonds that~~  
6 ~~have a face value under fifty thousand dollars, or until after the expiration of two~~  
7 ~~hundred eighty days for bonds that have a face value of fifty thousand dollars or~~  
8 ~~more.~~

9 ~~(2) The court may provide by court rule for the filing of an offset claim~~  
10 ~~against the principal with the secretary of the Department of Revenue, in accordance~~  
11 ~~with R.S. 47:299.1 et seq.~~

12 ~~(3) If, after the expiration of one hundred ninety days after the date of mailing~~  
13 ~~the notice of the signing of the judgment of bond forfeiture for bonds that have a face~~  
14 ~~value under fifty thousand dollars, or after the expiration of two hundred eighty days~~  
15 ~~for bonds that have a face value of fifty thousand dollars or more, a judgment of~~  
16 ~~bond forfeiture against a commercial surety company has not been suspensively~~  
17 ~~appealed or satisfied, or if proceedings, other than a devolutive appeal challenging~~  
18 ~~the bond forfeiture have not been timely filed, the prosecuting attorney may either~~  
19 ~~file a rule to show cause with the commissioner of insurance in accordance with R.S.~~  
20 ~~22:1441 or collect the judgment in the same manner as a civil judgment.~~

21 ~~B. The timely filing of a suspensive appeal shall suspend the enforcement of~~  
22 ~~the judgment of the bond forfeiture.~~

23 ~~C. A judgment of bond forfeiture shall not be set aside because of the~~  
24 ~~invalidity of the information required by the provisions of this Article include the~~  
25 ~~information required by the provisions of this Article.~~

26 **A. After mailing notice of the signing of the judgment of bond forfeiture,**  
27 **the district attorney may cause the judgment to be recorded in every parish in**  
28 **which the recordation may be proper. Every such recordation shall be without**  
29 **cost and shall operate as a judicial mortgage against the defendant and all his**

1 sureties.

2 B. Prior to recordation, the district attorney shall verify the inclusion of  
3 information on the judgment, namely, the address and the last four digits of the  
4 social security number of the defendant and his sureties. Third parties may rely  
5 upon the accuracy of the information required by the provisions of this Article  
6 for purposes of distinguishing the identity of the defendant and his sureties. Any  
7 judgment of bond forfeiture containing inaccurate information required by the  
8 provisions of this Article shall be deemed ineffective as a judicial mortgage to  
9 third parties who rely upon that information.

10 Art. 349.8. Satisfaction of judgment of bond forfeiture Appeals

11 ~~A.(1) For bonds that have a face value under fifty thousand dollars, a~~  
12 ~~judgment forfeiting the appearance bond shall at any time, within one hundred eighty~~  
13 ~~days after the date of mailing the notice of the signing of the judgment of bond~~  
14 ~~forfeiture, be fully satisfied and set aside upon the surrender of the defendant or the~~  
15 ~~appearance of the defendant. The surrender of the defendant also relieves the surety~~  
16 ~~of all obligations under the bond and the judgment.~~

17 ~~(2) A judgment forfeiting the appearance bond rendered according to this~~  
18 ~~Title shall at any time, within ten days of the one-hundred-eighty-day period~~  
19 ~~provided to surrender the defendant, be satisfied by the payment of the amount of the~~  
20 ~~bail obligation without incurring any interest, costs, or fees.~~

21 ~~B.(1) For bonds with a face value of fifty thousand dollars or more, a~~  
22 ~~judgment forfeiting the appearance bond shall, at any time within one hundred eighty~~  
23 ~~days after the date of mailing the notice of the signing of the judgment of bond~~  
24 ~~forfeiture, be fully satisfied and set aside upon the surrender or the appearance of the~~  
25 ~~defendant. The appearance of the defendant shall satisfy the judgment, and the~~  
26 ~~surrender shall relieve the surety of all obligations under the bond and the judgment.~~  
27 ~~A judgment forfeiting the appearance bond shall, at any time within ten days after~~  
28 ~~the expiration of the period provided to surrender the defendant, be fully satisfied by~~  
29 ~~the payment of the amount of the bail obligation without incurring any interest, costs,~~

1 or fees:

2 (2) A judgment forfeiting the appearance bond shall, at any time more than  
3 one hundred eighty days but within two hundred seventy days after the date of  
4 mailing the notice for the signing of the judgment of bond forfeiture, be satisfied and  
5 set aside upon the surrender or the appearance of the defendant and the payment in  
6 cash of ten percent of the face amount of the bond. The surrender and the payment  
7 in cash of ten percent of the face amount of the bond shall satisfy the judgment and  
8 shall relieve the surety of all obligations under the bond and the judgment. A  
9 judgment forfeiting the appearance bond shall, at any time within ten days after the  
10 expiration of the two-hundred-seventy-day period provided to surrender the  
11 defendant, be fully satisfied by the payment of the amount of the bail obligation  
12 without incurring any interest, costs, or fees:

13 **The rights of appeal of a bond forfeiture judgment shall be governed by**  
14 **Code of Civil Procedure Article 2081 et seq.**

15 Art. 349.9. Nonforfeiture situations **Enforcement of judgment**

16 A. A judgment decreeing the forfeiture of an appearance bond shall not be  
17 rendered if it is shown to the satisfaction of the court that the defendant, principal in  
18 the bond, is prevented from attending because of any of the following:

19 (1) He has a physical disability, illness, or injury.

20 (2) He is being detained in the jail or penitentiary of another jurisdiction.

21 (3) He is serving in the armed forces of the United States.

22 (4) He is a member of the Louisiana National Guard called to duty pursuant  
23 to R.S. 29:7. This provision does not apply to appearances in a state military court.

24 B. An affidavit by the jailer, warden, or other responsible officer where the  
25 principal is detained, or commanding officer, attesting to the cause of the failure to  
26 appear of the defendant shall be considered adequate proof of the inability to appear  
27 by the defendant.

28 C. If a judgment of bond forfeiture is rendered while the defendant is  
29 prevented from appearing for any reason enumerated in this Article, and if the



1            ~~defendant or his sureties file a motion to set aside the judgment of bond forfeiture~~  
2            ~~within one hundred eighty days after the date of the mailing the notice of the signing~~  
3            ~~of the judgment of bond forfeiture, and it is shown to the satisfaction of the court that~~  
4            ~~the defendant was prevented from attending for any cause enumerated in this Article,~~  
5            ~~the court shall declare the judgment of bond forfeiture null and void.~~

6            **After the delay for filing a suspensive appeal has elapsed, the prosecuting**  
7            **attorney may file a rule to show cause with the commissioner of insurance in**  
8            **accordance with R.S. 22:1441 or collect the judgment in the same manner as a**  
9            **civil judgment.**

10          Section 2. R.S. 15:85 is hereby amended and reenacted to read as follows:

11          §85. Failure to satisfy judgment of bond forfeiture

12            A. ~~If a judgment of bond forfeiture rendered after June 22, 1993, against a~~  
13            ~~commercial surety company has not been satisfied within two hundred ten days after~~  
14            ~~the date of mailing the notice of the signing of the judgment of bond forfeiture for~~  
15            ~~bonds that have a face value under fifty thousand dollars, or within four hundred~~  
16            ~~days from mailing the notice of the signing of the judgment of bond forfeiture for~~  
17            ~~bonds which have a face value of fifty thousand dollars or more, nor has a suspensive~~  
18            ~~appeal or other proceeding challenging the bond forfeiture been timely filed, the~~  
19            ~~prosecuting attorney may file with the district court, in the parish where the bond is~~  
20            ~~forfeited, a rule to show cause why that commercial surety company should not be~~  
21            ~~prohibited from executing criminal bail bonds before the court issuing the judgment~~  
22            ~~of bond forfeiture~~ **If a defendant fails to appear after January 1, 2015, and a**  
23            **judgment of bond forfeiture rendered against a commercial surety company has**  
24            **not been satisfied, nor has a suspensive appeal been timely perfected, the**  
25            **prosecuting attorney may file with the court, in the parish where the bond is**  
26            **forfeited, a rule to show cause why that commercial surety company should not**  
27            **be prohibited from executing criminal bail bonds before the court issuing the**  
28            **judgment of bond forfeiture.**

29            B. At the rule to show cause, the court may consider only issues which would

1 interrupt the enforceability of the judgment. The court may issue an order enjoining  
2 the commercial surety company from posting criminal bail bonds before the court  
3 issuing the judgment of bond forfeiture if the judgment is not satisfied ~~within ten~~  
4 ~~days~~ and if the court finds all of the following:

5 (1) ~~A judgment of bond forfeiture has been rendered, after June 22, 1993,~~  
6 ~~against the commercial surety~~ **A defendant failed to appear after January 1, 2015,**  
7 **and a judgment of bond forfeiture has been rendered against the commercial**  
8 **surety.**

9 (2) Proper notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **349.6**  
10 has been mailed.

11 (3) No suspensive appeal has been taken.

12 (4) ~~The defendant has neither been surrendered nor appeared within one~~  
13 ~~hundred eighty days of the date of mailing the notice of the signing of the judgment~~  
14 ~~of bond forfeiture for bonds that have a face value of fifty thousand dollars or more,~~  
15 ~~and the defendant has not been surrendered together with ten percent of the total~~  
16 ~~amount of the bond more than one hundred eighty days but within two hundred~~  
17 ~~seventy days after the date of mailing the notice of the signing of the judgment of~~  
18 ~~bond forfeiture~~ **The defendant has not been surrendered, constructively**  
19 **surrendered, nor appeared within one hundred eighty days since the notice of**  
20 **warrant of arrest was sent.**

21 (5) ~~Two hundred ten days have passed since the date of mailing the notice~~  
22 ~~of the signing of the judgment of bond forfeiture for bonds that have a face value~~  
23 ~~under fifty thousand dollars, or four hundred days have passed since the date of~~  
24 ~~mailing the notice of the signing of the judgment of bond forfeiture for bonds that~~  
25 ~~have a face value of fifty thousand dollars or more~~ **Thirty days have passed since**  
26 **the date of mailing the notice of the signing of the judgment of bond forfeiture.**

27 (6) The judgment of bond forfeiture has not been satisfied by payment ~~of the~~  
28 ~~full amount for bonds that have a face value under fifty thousand dollars, or has not~~  
29 ~~been satisfied by the surrender or the appearance of the defendant together with~~

1 ~~payment in cash of ten percent of the total bond amount for bonds that have a face~~  
2 ~~value of fifty thousand dollars or more, if applicable.~~

3 C. The burden of proof at the hearing shall be upon the commercial surety by  
4 a preponderance of evidence and shall be limited to documents contained in the  
5 official court record where the judgment was rendered. The surety company may use  
6 evidence not contained in the record to show that it did not receive ~~post-forfeiture~~  
7 ~~notice or the post-forfeiture notice was not properly mailed~~ **notice of the signing of**  
8 **the judgment of bond forfeiture.**

9 Section 3. R.S. 22:1441(A), (C)(2), and (D) are hereby amended and reenacted to  
10 read as follows:

11 §1441. Failure to timely satisfy claim under criminal bond contract

12 A. Any prosecuting attorney may file with the commissioner of insurance's  
13 office a rule to show cause if all the following are true:

14 (1) ~~A judgment of bond forfeiture has been rendered after June 22, 1993,~~  
15 ~~against the commercial surety underwriter~~ **A defendant failed to appear after**  
16 **January 1, 2015, and a judgment of bond forfeiture has been rendered against**  
17 **the commercial surety underwriter.**

18 (2) Notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **349.6** has  
19 been mailed.

20 (3) No suspensive appeal has been taken.

21 (4) The defendant has neither been surrendered, **constructively surrendered,**  
22 nor appeared within one hundred eighty days ~~of mailing of the notice of the signing~~  
23 ~~of the judgment of bond forfeiture~~ **since the notice of warrant of arrest was sent.**

24 (5) More than one hundred eighty days has lapsed ~~from the mailing of the~~  
25 ~~notice of the signing of the judgment of bond forfeiture~~ **since the notice of warrant**  
26 **of arrest was sent.**

27 (6) The judgment of bond forfeiture has not been satisfied by payment.

28 \* \* \*

29 C.(1) \* \* \*

1 (2) The commissioner shall order the commercial surety underwriter to pay  
2 immediately the judgment of bond forfeiture, if the commissioner finds that all of the  
3 following are true:

4 (a) ~~A judgment of bond forfeiture has been rendered after June 22, 1993,~~  
5 ~~against the commercial surety underwriter~~ **A defendant failed to appear after**  
6 **January 1, 2015, and a judgment of bond forfeiture has been rendered against**  
7 **the commercial surety underwriter.**

8 (b) Notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **349.6** has  
9 been mailed.

10 (c) No suspensive appeal has been taken.

11 (d) The defendant has neither been ~~surrendered nor appeared within one~~  
12 ~~hundred eighty days of mailing of the notice of the signing of the judgment of bond~~  
13 ~~forfeiture~~ **surrendered, constructively surrendered, nor appeared within one**  
14 **hundred eighty days since the notice of warrant of arrest has been sent.**

15 (e) More than one hundred eighty days has lapsed ~~from the mailing of the~~  
16 ~~notice of the signing of the judgment of bond forfeiture~~ **since the notice of warrant**  
17 **of arrest was sent.**

18 (f) The judgment of bond forfeiture has not been satisfied by payment.

19 D. The burden of proof at the hearing shall be upon the commercial surety  
20 by a preponderance of evidence and shall be limited to documents contained in the  
21 official court record where the judgment was rendered. The surety company may use  
22 evidence not contained in the record to show that it did not receive ~~post-forfeiture~~  
23 ~~notice or the post-forfeiture notice required pursuant to Code of Criminal Procedure~~  
24 ~~Article 349.3 was not properly mailed~~ **notice of the signing of the judgment of**  
25 **bond forfeiture.**

26 \* \* \*

27 Section 4. This Act shall become effective on January 1, 2015; if vetoed by the  
28 governor and subsequently approved by the legislature, this Act shall become effective on  
29 January 1, 2015, or on the day following such approval by the legislature, whichever is later.

---

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr.

---

## DIGEST

Claitor (SB 439)

Present law defines "bail" as the security given by a person to assure his appearance before the proper court whenever required.

Proposed law retains present law.

Proposed law defines "appearance" as a personal appearance before the court, or a designee thereof, before which the charges are pending.

Proposed law defines "surrender" as the detention of the defendant by the officer originally charged with his detention as upon the original commitment at the request of the surety.

Proposed law defines "constructive surrender" as the detention of the defendant in another parish of the state or a foreign jurisdiction when the surety has provided the court proof of the defendant's current incarceration and has paid the reasonable cost of returning the defendant to the jurisdiction where the warrant was issued. Proposed law further provides that a letter of incarceration issued by the officer charged with the detention of the defendant verifying that the defendant is incarcerated is adequate proof of the incarceration of the defendant. Proposed law further provides that the surety is to pay a fee of \$25 to the officer charged with the defendant's detention for the letter verifying the incarceration.

Present law provides that the defendant and personal surety signing a bail bond are to write the address at which each can be served under their respective signatures and the last four digits of their social security number.

Proposed law changes "served" to "sent notice" and otherwise retains present law.

Present law provides that the defendant and his counsel by joint affidavit filed of record in the proceeding in which the bond was given may appoint the defendant's counsel as his agent for service of notice to appear.

Proposed law makes the defendant's counsel the person to whom notice can be sent rather than the person on whom notice can be served. Proposed law otherwise retains present law.

Present law provides that by signing the bail bond, the defendant and his surety waive any right to notice.

Proposed law retains present law.

Present law provides that a surety may surrender the defendant or the defendant may surrender himself, in open court or to the officer charged with his detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond, and further provides that upon surrender of the defendant, the officer is to detain the defendant in his custody as upon the original commitment and acknowledge the surrender by a certificate signed by him and delivered to the surety.

Proposed law changes present law to provide that upon surrender of the defendant, the officer is to forward a copy of the certificate to the court rather than the surety. Proposed law further provides that upon verified surrender of the defendant prior to 180 days after the notice of warrant of arrest was sent, the surety is to be fully and finally discharged and relieved of all obligations under the bond. Proposed law otherwise retains present law.

Present law provides that when the surety has requested the surrender of the defendant, the officer is to acknowledge the surrender by a certificate of surrender signed by him and delivered to the surety, and the surety is to pay a fee of \$25 to the officer charged with the defendant's detention for recalling the capias, accepting the surrender, processing the paperwork, and giving the surety a certificate of surrender.

Proposed law retains present law.

Present law provides that at any time prior to forfeiture or within the time allowed by law for setting aside a judgment for forfeiture of the bail bond, the surety may present to the court a certificate of death naming the defendant as the deceased party.

Proposed law changes present law to provide that the surety may present to the court a certificate of death naming the defendant as the deceased party at any time prior to the defendant's failure to appear or within 180 days after the notice of warrant of arrest is sent. Proposed law otherwise retains present law.

Proposed law provides that at any time during which there is an active arrest warrant in the proceeding for which the bond was posted, the surety or bail bond producer who posted the bond may file an affidavit requesting the defendant be remanded and surrendered upon his appearance before the court where the charges are pending. Proposed law further provides that the affidavit will meet all the requirements set forth in present law relative to bail enforcement agents and must be filed before the court in which the charges are pending, with a copy of the affidavit provided to the prosecuting attorney. Proposed law further provides that within 180 days of the date on which the notice of warrant of arrest was sent, the court may either grant or deny the relief requested. Proposed law further provides that if the court grants the relief requested, then it is to remand the defendant and relieve the surety of all obligations under the bond, but if the court denies the relief requested, then the surety may seek supervisory review.

Present law provides that during the period provided for surrendering the defendant, the surety may request that the officer originally charged with the detention of a felony defendant place the name of the felony defendant into the National Crime Information Center (NCIC) registry.

Proposed law changes the time for requesting placement of the defendant's name in the NCIC registry to any time after the defendant's failure to appear and the issuance of the warrant of arrest rather than during the period provided for surrender to the defendant.

Present law provides relative to bond forfeiture procedure.

Present law provides that if the defendant fails to appear as ordered, the court is to immediately issue a warrant for the arrest of the person failing to appear and order a judgment decreeing the forfeiture of the bond against the defendant and his sureties in solido for the full amount of the bond.

Present law does not require a contradictory hearing to order a judgment of bond forfeiture.

Proposed law requires a contradictory hearing to order a judgment of bond forfeiture.

Proposed law provides that if a defendant who was properly noticed fails to appear as ordered, the court, on its own motion or on motion of the prosecuting attorney, is to immediately issue a warrant for the arrest of the defendant. Proposed law further provides that after a warrant of arrest is issued, the clerk of court within 60 days is to send a "notice of warrant of arrest" to the prosecuting attorney. Proposed law further provides that this notice is to also be sent by U.S. mail or electronic means to the defendant, the agent or bondsman, and the personal surety, and by electronic means or certified mail to the commercial surety, to the addresses provided pursuant to proposed law or to an address

registered with the Dept. of Insurance. Proposed law provides that after sending the notice of warrant of arrest, the clerk of court is to execute an affidavit that notice was sent and place the affidavit in the record.

Proposed law provides that if the defendant has not been surrendered, constructively surrendered, or appeared within 180 days since the notice of warrant of arrest was sent, the prosecuting attorney may file a rule to show cause requesting that a bond forfeiture judgment be rendered, which is to be mailed to the defendant and served on all other parties against whom a judgment is sought. Proposed law further provides that the rule to show cause is to be set for contradictory hearing.

Proposed law provides that upon proof at the contradictory hearing of the bail bond, the power of attorney, notice to the defendant and the surety as required by proposed law, and that more than 180 days have passed since the notice of the warrant of arrest was sent, the court is to forfeit the bail bond, and a judgment of bond forfeiture entered. Proposed law further provides that the judgment of bond forfeiture is to be issued against the defendant and his sureties in solido for the full amount of the bail. Proposed law further provides that a bail agent who represents the surety as an insurance agent cannot be held solidarily liable for the judgment of bond forfeiture against the defendant and his sureties, and in the event that a bail agent who represents the surety as an insurance agent is held solidarily liable, then the bail agent may request to be released from the judgment, and the release of the bail agent will have no effect on the judgment decreeing the forfeiture of the bond against the defendant and his sureties.

Present law provides that a judgment decreeing the forfeiture of a bail bond cannot be rendered if it is shown to the satisfaction of the court at the hearing on the rule to show cause that the defendant, principal in the bond, failed to appear in court because he has a physical disability, illness or injury; is being detained in the jail or penitentiary of another jurisdiction; was serving in the armed forces of the United States; was a member of the La. National Guard called to duty pursuant to present law; was prevented from appearing due to state of emergency declared by the governor.

Proposed law deletes physical disability, illness, or injury and detention in another jurisdiction from present law.

Present law provides a detailed procedure for notice of judgment to interested parties.

Proposed law deletes present law and provides that notice of the signing of the judgment of bond forfeiture is to be mailed by the clerk of court to the counsel of record for each party, and to each party not represented by counsel, pursuant to present law relative to notice of a civil judgment.

Present law provides that after mailing notice of the signing of the judgment of bond forfeiture, the district attorney must cause the judgment to be recorded in every parish in which the recordation may be proper, and every such recordation is without cost and operates as a judicial mortgage against the defendant and all his sureties.

Proposed law changes the recordation provision in present law from mandatory to discretionary but otherwise retains present law.

Present law provides detailed procedures for satisfaction and enforcement of a bond forfeiture judgment.

Proposed law deletes present law and provides that after the delay for filing a suspensive appeal has elapsed, the prosecuting attorney may file a rule to show cause with the commissioner of insurance in accordance with present law relative to failure to timely satisfy a claim under a criminal bond contract, or may collect the judgment in the same manner as a civil judgment.

Present law provides a procedure for appealing a judgment of bond forfeiture.

Proposed law deletes present law and provides that the rights of appeal of a bond forfeiture judgment are governed by present law relative to civil appeals.

Present law provides relative to a failure to timely satisfy a claim under a criminal bond contract.

Proposed law essentially retains present law but changes the trigger date for present law procedures from 6/22/93 to 1/15/15 relative to bond forfeiture judgment dates and the date after which a defendant fails to appear.

Present law provides relative to proof and procedures at a bond forfeiture hearing.

Proposed law retains present law and adds that a surety company may use evidence not contained in the record to show that it did not receive notice of the signing of the judgment of bond forfeiture.

Effective January 1, 2015.

(Amends C.Cr.P. Art. 311, 322(A) and (C), 345, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8, and 349.9, R.S. 15:85, and R.S. 22:1441(A), (C)(2), and (D))