

Regular Session, 2010

HOUSE BILL NO. 286

BY REPRESENTATIVE BURRELL

(On Recommendation of the Louisiana State Law Institute)

CRIMINAL/BAIL: Provides for a comprehensive revision of the law regarding bail

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 312, 313, 315, 318, 319, 322(A), (B), and (C), 326(B), 330.2(E), 332(A), 334.1, 334.3(A)(2), 338, 342, 344, 345(A), (B), (C), (D)(introductory paragraph) and (1) and (2), (G), (I)(introductory paragraph) and (2), (J)(introductory paragraph) and (2) and 955(F), R.S. 13:846(A)(1)(c), R.S. 15:85, 86, 88, and R.S. 22:1441(A)(2), (4), and (5), (C)(1) and (2)(b), (d), and (e), and (D), and 1585(A), to enact Code of Criminal Procedure Articles 349 through 349.9, and to repeal Code of Criminal Procedure Articles 322(D) and (E), 339, and 340(E) and R.S. 15:87, relative to bail; to provide for a comprehensive revision of the law regarding bail; to provide for the types of bail; to provide relative to sureties, personal sureties, and secured personal sureties; to provide for bail procedures; to provide relative to the establishment of a legal mortgage over immovable property to secure a bail obligation; to provide for procedures for the establishment of a legal mortgage; to provide for the cancellation of the mortgage; to provide for sanctions for furnishing false or incorrect information; to provide for bail at various stages of proceedings; to provide with respect to forfeitures and forfeiture procedures; to provide for the failure to appear and issuance of arrest warrant; to provide for procedures relative to recordation of judgments of bond forfeitures; to provide for appeals; to provide for enforcement and satisfaction of judgments of bond forfeiture; to provide for failure to satisfy judgment of bond forfeiture; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Code of Criminal Procedure Articles 312, 313, 315, 318, 319, 322(A),  
3 (B), and (C), 326(B), 330.2(E), 332(A), 334.1, 334.3(A)(2), 338, 342, 344, 345(A), (B), (C),  
4 (D)(introductory paragraph) and (1) and (2), (G), (I)(introductory paragraph) and (2),  
5 (J)(introductory paragraph) and (2) and 955(F) are hereby amended and reenacted and Code  
6 of Criminal Procedure Articles 349 through 349.9 are hereby enacted to read as follows:

7 Art. 312. Types and elections of bail

8 A. ~~There are three~~ The types or forms of bail in Louisiana are:

9 (1) Bail ~~through~~ with a commercial surety.

10 (2) Bail ~~through~~ with cash deposits a secured personal surety.

11 (3) Bail ~~without~~ with an unsecured personal surety.

12 (4) Bail without surety, with or without security.

13 (5) Bail with a cash deposit.

14 B. ~~All~~ Except as provided below, all bail must be posted in the full amount  
15 set fixed by the court.

16 C. When the court fixes the amount of bail, a secured bail undertaking may  
17 be satisfied by a commercial surety, a cash deposit, or with the court's approval, by  
18 a secured personal surety or a bond secured by the property of the defendant, or by  
19 any combination of the above.

20 D. When the court elects to release the defendant on an unsecured personal  
21 surety or a bail without surety, that election shall be expressed in the bail order.

22 Art. 313. Surety

23 Surety ~~is defined as used in this Title is~~ a legal suretyship pursuant to the  
24 provisions of the Civil Code Article 3035 et seq.

25 \* \* \*

26 Art. 315. Personal surety

27 A personal surety must be a ~~citizen and resident of Louisiana, and worth,~~  
28 natural person domiciled in this state who owns property in this state that is subject  
29 to seizure and is of sufficient value to satisfy, considering all his property whether

1        ~~incorporeal moveable or immovable property~~, the amount specified in the bail bond.  
 2        The ~~worth~~ value of the property of the surety shall ~~be exclusive of the amount of any~~  
 3        ~~other bail bond on which he may be principal or surety~~, ~~exclusive of~~ exclude  
 4        property exempt from execution, and shall be over and above all his other liabilities  
 5        including the amount of any other bail bond on which he may be principal or surety.  
 6        When there is more than one personal surety, the above requirements shall apply to  
 7        ~~their~~ the aggregate ~~worth~~ value of their property. No personal surety shall charge a  
 8        fee or receive any compensation for posting a personal surety bond ~~on behalf of any~~  
 9        person.

\* \* \*

11        Art. 318. Secured personal surety

12                A secured personal surety is a personal surety who meets all the  
 13        qualifications of law and specifically mortgages immovable property located in the  
 14        state of Louisiana or gives a security interest in ~~immovable property located in the~~  
 15        ~~state of Louisiana~~ movable property to secure the bail obligation.

16        Art. 319. ~~Proof of security interest~~ Conditions for providing a property bond

17                ~~Prior to the release of any criminal defendant on a secured personal surety~~  
 18        ~~bond, the personal surety shall present to the officer authorized to accept the bond~~  
 19        ~~recorded proof of a security interest in immovable property in favor of the state of~~  
 20        ~~Louisiana or the proper political subdivision, as proof that the value of the security~~  
 21        ~~interest less any encumbrances is equal to or greater than the full amount of the bail~~  
 22        ~~as set by the court. These requirements shall not be waived, except on weekends or~~  
 23        ~~holidays, and then only when sufficient proof shall be submitted to the officer~~  
 24        ~~authorized to accept the bond.~~

25                A. A defendant or a secured personal surety, pursuant to Article 312, may  
 26        establish a legal mortgage over immovable property in favor of the state of Louisiana  
 27        or the proper political subdivision to secure a bail obligation.



1 Art. 322. Declaration of residence by defendant and surety; waiver of notice

2 A. The defendant and personal surety ~~when~~ signing a bail bond shall write  
3 the address at which each can be served under his their respective signatures. ~~the~~  
4 ~~address at which he resides~~ ~~The address shall be conclusively presumed to continue~~  
5 ~~for all proceedings on the bond, until he files in the proceeding in which the bond~~  
6 ~~was given a written declaration changing the address.~~ The defendant and his counsel  
7 may, by joint affidavit filed of record in the proceeding in which the bond was given,  
8 appoint his counsel as his agent for service of notice to appear. The appointment  
9 shall be conclusively presumed to continue until the defendant files of record an  
10 affidavit revoking or changing the appointment. The affidavit shall include the  
11 address at which to serve his counsel. A commercial surety shall inscribe its proper  
12 mailing address on the face of the power of attorney used to execute the bond. The  
13 agent or bondsman posting the bond shall write his proper mailing address under his  
14 signature.

15 B. ~~A personal surety signing a bail bond shall write under his signature the~~  
16 ~~address at which he resides.~~ ~~The address~~ Each address provided pursuant to  
17 Paragraph A of this Article shall be conclusively presumed to continue for all  
18 proceedings on the bond; until the party providing the address changes it by filing  
19 ~~he files in the proceeding in which the bond was given a written declaration changing~~  
20 ~~the address in the proceeding for which the bond was filed.~~

21 C. ~~A commercial surety shall inscribe on the face of the power of attorney~~  
22 ~~used to execute the bond its proper mailing address.~~ ~~This address shall be~~  
23 ~~conclusively presumed to continue for all the proceedings on the bond, until a written~~  
24 ~~declaration changing the address is filed in the proceeding in which the bond was~~  
25 ~~given.~~ By signing the bail bond the defendant and his surety waive any right to  
26 notice, except that provided for in Articles 344 and 349.3.

27 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 326. Condition of the bail undertaking

2 \* \* \*

3 B.(1) Upon conviction and imposition of sentence or the pronouncement of  
4 sentence or condition of probation pursuant to Article 894 in misdemeanor cases, the  
5 bail undertaking shall cease and the surety shall be relieved of all obligations under  
6 the bond.

7 (2) Upon ~~entry of a plea of guilty or nolo contendere~~ conviction in any  
8 felony case, the bail undertaking shall cease and the surety shall be relieved of all  
9 obligations under the bond, ~~unless the surety has agreed in writing to continue on the~~  
10 ~~existing bail undertaking or has posted another bond.~~

11 (3) In all cases, if necessary to assure the presence of the defendant at all  
12 future stages of the proceedings, ~~if any~~, the court may in its discretion, in accordance  
13 with Article 332 require the defendant to post another bond or other acceptable  
14 security, or may release the defendant on bail without surety as provided for in  
15 Article 325. The court may continue the existing bail undertaking with the written  
16 approval of the surety on the bond. Such approval must be obtained from the surety  
17 ~~in accordance with the provisions of this Paragraph~~ after conviction.

18 \* \* \*

19 Art. 330.2. Bail hearing for certain sex offenders; detention

20 \* \* \*

21 E. ~~The types or forms of bail which may be posted for a sex offense are~~  
22 ~~secured personal surety as authorized by Article 318, commercial surety as~~  
23 ~~authorized by Article 314, and cash deposits as authorized by Article 324. The~~  
24 ~~posting of bail through use of unsecured personal surety as authorized by Article 317~~  
25 ~~is prohibited.~~

26 (1) The posting of bail with an unsecured personal surety as authorized by  
27 Article 317 for a sex offense is prohibited.

28 (2) The only types of bail that may be posted for a sex offense are:

29 (a) Bail with a secured personal surety as authorized by Article 318.

1 (b) Bail with a commercial surety as authorized by Article 314.

2 (c) Bail with a cash deposit as authorized by Article 324.

3 \* \* \*

4 Art. 332. Bail after conviction

5 A. A convicted person shall be remanded to jail to await sentence unless any  
6 of the following occur:

7 (1) He is allowed to remain free on a bail obligation posted prior to  
8 conviction by operation of Article 326(B), and the bail previously fixed is in  
9 accordance with all of the applicable provisions of this Article.

10 (2) ~~he~~ He is released by virtue of a ~~on~~ bail obligation posted after conviction,  
11 which bail was fixed in accordance with this Article.

12 \* \* \*

13 Art. 334.1. Felony involving firearm; ~~release on own recognizance prohibited~~ bail

14 ~~Notwithstanding any other provision of law to the contrary, the~~ The court  
15 shall not release any defendant ~~on his own recognizance~~ who has been arrested for  
16 a felony offense, an element of which is the discharge, use, or possession of a firearm  
17 on his personal undertaking without security or with an unsecured personal surety.

18 \* \* \*

19 Art. 334.3. Prohibition on subsequent bail obligation following revocation or  
20 forfeiture; certain offenses

21 A.

22 \* \* \*

23 (2) Any person who voluntarily surrenders following revocation or forfeiture  
24 of bail may be released only on bail ~~through~~ with a commercial surety and in an  
25 amount higher than the original bail.

26 \* \* \*

27 Art. 338. Form and contents of bail order

28 ~~An order fixing bail~~ The judge or magistrate shall be in writing, set the ~~type~~  
29 ~~and a single~~ amount of bail for each charge, and designate the officer or officers

1 authorized to accept the bail, ~~and shall be signed by the magistrate.~~ The An order  
 2 fixing bail may issue on ~~motion~~ request of the state or defendant, or on the initiative  
 3 of the judge or magistrate's ~~magistrate own initiative.~~ ~~In any parish with a~~  
 4 ~~population in excess of four hundred ninety thousand, as established by the 1990~~  
 5 ~~U.S. Decennial Census, the magistrate or district court shall hold a contradictory~~  
 6 ~~hearing prior to fixing bail in any felony case.~~

7 \* \* \*

8 Art. 342. Increase or reduction of bail; sufficiency of security

9 The court having trial jurisdiction over the offense charged, on its own  
 10 motion or on motion of the state or defendant, for good cause, may either increase  
 11 or reduce the amount of bail, or require new or additional security. For purposes of  
 12 this Article, good cause for increase of bail specifically includes but is not limited  
 13 to the rearrest of the defendant on offenses alleged to have been committed while out  
 14 on bond. ~~However, in any parish with a population in excess of four hundred ninety~~  
 15 ~~thousand, as established by the 1990 U.S. Decennial Census, the district court shall~~  
 16 ~~hold a contradictory hearing prior to a modification of the bail order.~~ The  
 17 modification of any bail order wherein a bail bond has been posted by a criminal  
 18 defendant and his sureties shall upon said modification terminate the liability of the  
 19 defendant and his sureties under the previously existing bail contract. A new bail  
 20 must be posted in the amount of the new bail order.

21 \* \* \*

22 Art. 344. Right to notice of time and place of defendant's required appearance

23 A. When a bail bond fixes ~~the initial~~ an appearance date, the defendant  
 24 appears as ordered, and notice of the next appearance date is given to the defendant,  
 25 no additional notice of that appearance date is required to be given to the defendant  
 26 or the personal surety or the commercial surety or the agent or bondsman who posted  
 27 the bond for the commercial surety, ~~if the defendant appears as ordered.~~ ~~If a~~  
 28 ~~defendant fails to appear when a bail bond fixes the initial appearance date, no~~  
 29 ~~additional preforfeiture notice for that date is required to be given to the defendant~~



1           or the personal surety or the commercial surety or the agent or bondsman who posted  
2           the bond for the commercial surety. The bond shall be forfeited forthwith as per R.S.  
3           15:85.

4           B.(1) When a bail bond does not fix the appearance date, ~~and the presence~~  
5           ~~is required of a person who has been released on bail,~~ written notice of the time, date,  
6           and place the defendant, ~~or his duly appointed agent,~~ is first ordered by the court to  
7           appear shall be given to the defendant or his duly appointed agent and his personal  
8           surety or the commercial surety or the agent or bondsman who posted the bond for  
9           the commercial surety ~~shall be given written notice of the time, date, and place the~~  
10          principal is required to appear.

11          (2) ~~The notice may be delivered to the defendant or his duly appointed agent~~  
12          ~~and the personal surety or the commercial surety or the agent or bondsman who~~  
13          ~~posted the bond for the commercial surety by an officer designated by the court, at~~  
14          ~~least two days prior to the day set for the appearance; or this notice may be mailed~~  
15          ~~by United States first class mail to the defendant or his duly appointed agent and his~~  
16          ~~personal surety or the commercial surety or the agent or bondsman who posted the~~  
17          ~~bond for the commercial surety, at least three days prior to the day set for the~~  
18          ~~appearance. The notice shall be mailed to the defendant or his duly appointed agent~~  
19          ~~and his personal surety or the commercial surety or the agent or bondsman who~~  
20          ~~posted the bond for the commercial surety to the address designated pursuant to~~  
21          Article 322.

22          (3) C. If the defendant appears as ordered and the proceeding is continued  
23          to a specific date, the defendant ~~or his duly appointed agent~~ and the personal surety  
24          or the commercial surety or the agent or bondsman who posted the bond for the  
25          commercial surety need not be given notice of the new appearance date. If the  
26          defendant fails to appear as ordered, or the proceeding is not continued to a specific  
27          date, the defendant or his duly appointed agent, the personal surety or the agent or  
28          bondsman who posted the bond for the commercial surety shall be given notice of  
29          the new appearance date.

1           (4) Failure to give notice, as required by this Paragraph, relieves the surety  
2           from liability on a judgment of bond forfeiture for the defendant's non-appearance  
3           on that particular date.

4           D. Notice required pursuant to the provisions of this Article to the defendant  
5           and the personal surety or the commercial surety or the agent or bondsman who  
6           posted the bond for the commercial surety shall be made to the address provided  
7           pursuant to Article 322. Notice may be made:

8           (1) By an officer designated by the court at least two days prior to the  
9           appearance date; or

10          (2) Mailed by United States first class mail at least five days prior to the  
11          appearance date.

12          E. Failure to give the notice required by this Article relieves the surety from  
13          liability on a judgment of bond forfeiture for the nonappearance of the defendant on  
14          that particular date.

15          Art. 345. Surrender of defendant

16          A. A surety may surrender the defendant or the defendant may surrender  
17          himself, in open court or to the officer charged with his detention, at any time prior  
18          to forfeiture or within the time allowed by law for setting aside a judgment of  
19          forfeiture of the bail bond. For the purpose of surrendering the defendant, the surety  
20          may arrest him. Upon surrender of the defendant, the officer shall detain the  
21          defendant in his custody as upon the original commitment and shall acknowledge the  
22          surrender by a certificate signed by him and delivered to the surety. ~~Thereafter,~~  
23          After compliance with the provisions of Paragraph F, the surety shall be fully and  
24          finally discharged and relieved of ~~any and all obligation~~ obligations under the bond.

25          B. If the defendant is incarcerated by the officer originally charged with his  
26          detention at any time prior to forfeiture or within the time allowed by law for setting  
27          aside a judgment for forfeiture of the bail bond, the surety may apply for and receive  
28          from any officer in charge of any facility in the state of Louisiana or a foreign  
29          jurisdiction charged with the detention of the defendant a letter verifying that the

1 defendant is incarcerated, but only after the surety verifies to the satisfaction of the  
 2 officer charged with the detention of the defendant as to the identity of the defendant.  
 3 ~~Thereafter,~~ After compliance with the provisions of Paragraph F, the surety shall be  
 4 fully and finally discharged and relieved of ~~any and all obligation~~ obligations under  
 5 the bond.

6 C. When a surety receives either a certificate of surrender provided for in  
 7 Paragraph A of this Article or a letter of verification as provided for in Paragraph B  
 8 of this Article, the surety shall pay a fee of twenty-five dollars to the officer charged  
 9 with the defendant's detention for recalling the capias, accepting the surrender or  
 10 verifying the incarceration, processing the paperwork, and giving the surety a  
 11 certificate of surrender or a letter of verification of incarceration issued pursuant to  
 12 this Article after compliance with the provisions of Paragraph F of this Article  
 13 releasing him from his obligation under the defendant's bond.

14 D. If during the ~~six-month~~ period allowed for the surrender of the defendant,  
 15 the defendant is found to be incarcerated in another parish of the state of Louisiana  
 16 or a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if all of  
 17 the following conditions are met:

18 (1) The defendant or his sureties file a motion ~~in summary proceeding~~ within  
 19 the ~~six-month~~ period allowed for the surrender of the defendant. The motion shall  
 20 be heard summarily.

21 (2) The ~~defendant's~~ sureties of the defendant ~~produce to provide~~ the court  
 22 adequate proof of ~~defendant's~~ incarceration of the defendant, or the officer originally  
 23 charged with ~~defendant's~~ his detention verifies ~~the defendant's~~ his incarceration. A  
 24 letter of incarceration issued pursuant to this Article verifying that the defendant was  
 25 incarcerated within the ~~six-month~~ period allowed for the surrender of the defendant  
 26 at the time the defendant or the surety files the motion, shall be deemed adequate  
 27 proof of the ~~defendant's~~ incarceration of the defendant.

28 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           G. During the ~~six-month~~ period provided for surrendering the defendant, the  
 2           surety may request ~~from~~ that the officer originally charged with the detention of a  
 3           felony ~~defendant's detention~~ defendant ~~that~~ place the name of the felony ~~defendant's~~  
 4           ~~name be placed~~ defendant into the National Crime Information Center registry.  
 5           ~~Upon such a request, the~~ The surety shall pay to ~~the~~ that officer ~~originally charged~~  
 6           ~~with the felony defendant's detention~~ a fee of twenty-five dollars for processing ~~such~~  
 7           the placement. If, after ~~the request by the surety and~~ payment of the twenty-five-  
 8           dollar fee, the ~~defendant's~~ name of the defendant is removed from the National  
 9           Crime Information Center registry without cause during the ~~six-month~~ period  
 10          provided for surrendering the defendant, the surety shall be relieved of all obligations  
 11          under the bond.

\* \* \*

13           I. In addition to and notwithstanding any other provision of law, a surety  
 14           may seek an extension of time to surrender a defendant, or have the judgment of  
 15           bond forfeiture set aside by filing a motion in the criminal court of record and after  
 16           contradictory hearing with the district attorney and with proof satisfactory to ~~the~~  
 17           ~~discretion~~ of the court that a fortuitous event has occurred and that ~~such~~ the event has  
 18           made it impossible to perform ~~his performance~~ as required under the contract  
 19           ~~impossible to perform~~. A motion seeking relief pursuant to this Paragraph must be  
 20           filed within ~~twelve months~~ three hundred sixty-six days from the date of the  
 21           fortuitous event, excluding legal delays. The court in its discretion may do any of  
 22           the following:

\* \* \*

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

\* \* \*

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

16 \* \* \*

17 (2) Grant an extension of time up to ~~twelve months~~ three hundred sixty-six  
 18 days from the expiration of the initial ~~six-month~~ time period allowed for the  
 19 surrender of the defendant from the date of the mailing of proper notice of bond  
 20 forfeiture. If the court grants that extension, judicial interest shall be suspended  
 21 during that additional time period.

22 \* \* \*

23 Art. 349. Forfeiture procedure

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

26 B. The court may forfeit the bond forthwith or may proceed with the bond  
 27 forfeiture within sixty days of the nonappearance subject to the provisions of Article  
 28 349.3.

1        Art. 349.1. Failure to appear; issuance of arrest warrant

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

5        Art. 349.2. Proof necessary at bond forfeiture hearing

6                Upon motion of the prosecuting attorney, and upon proof of the bail contract,  
7        the power of attorney if any, notice to the defendant and the surety as required by  
8        Article 344, and the defendant's failure to appear as required, a bond shall be  
9        forfeited and a judgment of bond forfeiture shall be signed.

10       Art. 349.3. Notice of judgment

11               A.(1) After entering the fact of the signing of the judgment of bond forfeiture  
12       in the court minutes, the clerk of court shall promptly mail notice of the signing of  
13       the judgment of bond forfeiture. The notice of the signing of the judgment shall be  
14       mailed by United States certified mail with return receipt affixed thereto to the  
15       defendant, the personal surety, the agent or bondsman who posted the bond for the  
16       commercial surety, and the commercial surety at the addresses designated in Article  
17       322. Notice to the commercial surety shall include the power of attorney number  
18       used to execute the bond without which the bond obligation of the commercial surety  
19       shall be suspended until the power of attorney number is supplied, provided the  
20       commercial surety provides notice to the clerk of court who mailed the notice to the  
21       surety of the failure to include such number in the notice by certified mail not later  
22       than thirty days following receipt of notice of the judgment. If the power of attorney  
23       number is not provided to the commercial surety within thirty days after the date of  
24       receipt by the clerk of court of the notice that it was not included in the notice of the  
25       judgment, the commercial surety shall be released from the bond obligation.

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

1           B. After mailing the notice of the signing of the judgment of bond forfeiture,  
2           the clerk of court shall execute an affidavit of the mailing and place the affidavit and  
3           the return receipts in the record.

4           C. Failure to mail notice of the signing of the judgment within sixty days  
5           after the defendant fails to appear shall release the sureties of all obligations under  
6           the bond.

7           Art. 349.4. Recordation of judgment

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

12          Art. 349.5. Nullity actions, summary proceedings, and cumulative actions

13           A.(1) The defendant and his sureties shall be entitled to assert defenses and  
14           actions in nullity by use of summary proceedings in the criminal matter before the  
15           trial court that issued the judgment of bond forfeiture within sixty days after the date  
16           of mailing the notice of the signing of the judgment of bond forfeiture. Any  
17           summary proceeding brought by the defendant or his sureties within the sixty-day  
18           period shall be determined by the court within one hundred eighty days of the date  
19           of mailing the notice of the signing of the judgment of bond forfeiture.

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

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

28           C. A surety, in an action in nullity or to set aside a bond forfeiture, may  
29           cumulate two or more cases that are similarly situated by the facts and legal issues

1        as one cumulative action. The actions cumulated shall be mutually consistent and  
2        employ the same form of procedure. The action may be by summary proceedings  
3        in the section of the criminal court where those cases are pending, or by an ordinary  
4        civil proceeding when the action is within the jurisdiction of the court and in the  
5        proper venue. The surety has the burden of proving that the cumulation of the  
6        actions is appropriate and in the interest of justice.

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

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

11                (2) Order the moving party to elect which action shall proceed and to amend  
12        the pleadings to delete all allegations relating to the discontinued action. The penalty  
13        for noncompliance with an order to amend is a dismissal of the entire proceeding.

14        Art. 349.6. Appeals

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

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

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

24        Art. 349.7. Enforcement of judgment

25                A.(1) No judgment of bond forfeiture rendered on or after August 15, 1997,  
26        shall be enforced until after the expiration of one hundred ninety days after the date  
27        of mailing the notice of the signing of the judgment of bond forfeiture for bonds that  
28        have a face value under fifty thousand dollars, or until after the expiration of two



1 hundred eighty days for bonds that have a face value of fifty thousand dollars or  
2 more.

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

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

16 B. The timely filing of a suspensive appeal shall suspend the enforcement  
17 of the judgment of the bond forfeiture.

18 Art. 349.8. Satisfaction of judgment of bond forfeiture

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

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

1           B.(1) For bonds with a face value of fifty thousand dollars or more, a  
2           judgment forfeiting the appearance bond shall, at any time within one hundred eighty  
3           days after the date of mailing the notice of the signing of the judgment of bond  
4           forfeiture, be fully satisfied and set aside upon the surrender or the appearance of the  
5           defendant. The appearance of the defendant shall satisfy the judgment, and the  
6           surrender shall relieve the surety of all obligations under the bond and the judgment.  
7           A judgment forfeiting the appearance bond shall, at any time within ten days after  
8           the expiration of the period provided to surrender the defendant, be fully satisfied by  
9           the payment of the amount of the bail obligation without incurring any interest, costs,  
10          or fees.

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

22          Art. 349.9. Nonforfeiture situations

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

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

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

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



1 Section 2. R.S. 13:846(A)(1)(c) is hereby amended and reenacted to read as follows:

2 §846. Additional fees; attending court sessions; transcripts of appeal in criminal  
3 cases; costs of prosecution; forfeited bail bond

4 A. In addition to other fees fixed by law, the clerks of the several district  
5 courts throughout the state of Louisiana, the parish of Orleans excepted, shall be  
6 entitled to demand and receive the following fees of office:

7 (1)

8 \* \* \*

9 (c) Notwithstanding any other provision of law to the contrary, in all cases  
10 where a criminal bail bond posted by a commercial surety is forfeited and is actually  
11 collected by the district attorney, including the parish of Orleans, the sum of thirty  
12 dollars total for each judgment for which notices are sent pursuant to ~~R.S. 15:85~~  
13 Code of Criminal Procedure Article 349.3 shall be paid to the clerk of court by the  
14 district attorney from the proceeds of such collection and the balance collected shall  
15 be paid by the district attorney according to law; in all cases where a bail bond is  
16 forfeited and is actually collected by the sheriff, the sum of seven dollars and fifty  
17 cents out of the amount of the forfeited bond shall be paid to the clerk of court by the  
18 sheriff as the clerk's fee.

19 \* \* \*

20 Section 3. R.S. 15:85, 86, and 88 are hereby amended and reenacted to read as  
21 follows:

22 §85. ~~Forfeiture; procedure; notice; and collection~~ Failure to satisfy judgment of  
23 bond forfeiture

24 ~~All bonds taken to secure the appearance of any person before any court~~  
25 ~~executed in the state of Louisiana shall be forfeited and collected as follows:~~

26 (1) ~~Failure to appear and answer. If at the time fixed for appearance the~~  
27 ~~defendant fails to appear and answer when called, the judge, on motion of the~~  
28 ~~prosecuting attorney, upon hearing of proper evidence including: the bail contract;~~  
29 ~~the power of attorney if any, and the notice to the defendant and the surety as~~

1 required by Article 344 of the Code of Criminal Procedure, shall immediately and  
2 forthwith issue a warrant for the arrest of the person failing to appear and order a  
3 judgment decreeing the forfeiture of the bond and against the defendant and his  
4 sureties in solid for the full amount of the bond.

5 (2) ~~Signing of the judgment of bond forfeiture.~~ Following the defendant's  
6 failure to appear, the court shall sign a written judgment of bond forfeiture.

7 (3) ~~Notice of judgment.~~

8 (a) After entering the fact of the signing of the judgment of bond forfeiture  
9 in the court minutes, the clerk of court shall promptly mail notice of the signing of  
10 the judgment of bond forfeiture. The notice of the signing of the judgment shall be  
11 mailed by United States certified mail with return receipt to all of the following:

12 (i) ~~The defendant at the address designated pursuant to Code of Criminal~~  
13 ~~Procedure Art. 322.~~

14 (ii) ~~The personal sureties at the addresses designated pursuant to Code of~~  
15 ~~Criminal Procedure Art. 322.~~

16 (iii) ~~The agent or bondsman who posted the bond for the commercial sureties~~  
17 ~~at the address designated pursuant to Code of Criminal Procedure Art. 322.~~

18 (iv) ~~The commercial sureties at the addresses designated pursuant to Code~~  
19 ~~of Criminal Procedure Art. 322. Notice to the commercial sureties shall include the~~  
20 ~~power of attorney number used to execute the bond without which the bond~~  
21 ~~obligation of the commercial surety shall be suspended until the power of attorney~~  
22 ~~number is supplied provided the commercial surety provides notice to the clerk of~~  
23 ~~court who mailed the notice to the surety of the failure to include such number in the~~  
24 ~~notice by certified mail not later than thirty days following receipt of notice of the~~  
25 ~~judgment. If the power of attorney number is not provided to the commercial surety~~  
26 ~~within thirty days following the date of receipt by the clerk of court of the notice that~~  
27 ~~it was not included in the notice of the judgment, the commercial surety shall be~~  
28 ~~released from the bond obligation.~~

1           (b) After mailing the notice of the signing of the judgment of bond forfeiture,  
2 the clerk of court shall execute an affidavit of the mailing and place the affidavit and  
3 the return receipts in the record.

4           (c) Failure to mail proper notice of the signing of the judgment within sixty  
5 days after the defendant's failure to appear shall release the sureties of any and all  
6 obligations under the bond.

7           (d) The defendant shall reimburse the clerk of court for all postage costs and  
8 other costs in connection with Items (a)(i) through (iv) of this Paragraph.

9           (4) ~~Recordation of judgment. After mailing notice of the signing of the~~  
10 ~~judgment of bond forfeiture, the district attorney shall cause the judgment to be~~  
11 ~~recorded in every parish in which he thinks the recordation is proper. Every such~~  
12 ~~recordation shall be without cost and shall operate as a judicial mortgage against the~~  
13 ~~defendant and all his sureties.~~

14           (5) ~~Summary proceedings. The defendant and his sureties shall be entitled~~  
15 ~~to bring defenses and actions in nullity by use of summary proceedings in the~~  
16 ~~criminal matter before the trial court which issued the judgment of bond forfeiture~~  
17 ~~within sixty days from mailing the notice of the signing of the judgment of bond~~  
18 ~~forfeiture. Any summary proceeding brought by the defendant or his sureties within~~  
19 ~~the sixty-day period shall be determined by the court within one hundred eighty days~~  
20 ~~of mailing the notice of the signing of the judgment of bond forfeiture. The~~  
21 ~~defendant and his sureties shall be entitled to bring defenses pursuant to Code of~~  
22 ~~Criminal Procedure Art. 345 and R.S. 15:87 by use of summary proceedings in the~~  
23 ~~criminal matter before the trial court which issued the judgment of bond forfeiture~~  
24 ~~within six months from mailing the notice of the signing of the judgment of bond~~  
25 ~~forfeiture.~~

26           (6) ~~Appeals:~~

27           (a) ~~The defendant and his sureties shall have the right to an appeal that~~  
28 ~~suspends the effect or the execution of the judgment of bond forfeiture. The security~~  
29 ~~to be furnished for this suspensive appeal shall be equal to the bail obligation.~~

1           (b) ~~The defendant and his sureties shall have the right to a devolutive appeal~~  
2           ~~of the judgment of bond forfeiture.~~

3           (c) ~~All appeals shall be to the appellate court having general civil appellate~~  
4           ~~jurisdiction over the court issuing the judgment of bond forfeiture.~~

5           (7) ~~Enforcement and collection of judgment. No judgment of bond forfeiture~~  
6           ~~rendered on or after August 15, 1997, shall be enforced or collected until ten days~~  
7           ~~after the expiration of six months after the mailing of proper notice of the signing of~~  
8           ~~the judgment of bond forfeiture for bonds which have a face value under fifty~~  
9           ~~thousand dollars, or until ten days after the expiration of nine months for bonds~~  
10           ~~which have a face value of fifty thousand dollars or more. The timely filing of a~~  
11           ~~suspensive appeal shall suspend the enforcement or collection of the judgment of the~~  
12           ~~bond forfeiture. In addition, the court may provide by court rule for the filing of an~~  
13           ~~offset claim against the principal with the secretary of the Department of Revenue,~~  
14           ~~in accordance with R.S. 47:299.1 through 299.20. If after six months and ten days~~  
15           ~~from the mailing of proper notice of the signing of the judgment for bonds which~~  
16           ~~have a face value under fifty thousand dollars, or if after nine months and ten days~~  
17           ~~for bonds which have a face value of fifty thousand dollars or more, a judgment of~~  
18           ~~bond forfeiture against a commercial surety company has not been suspensively~~  
19           ~~appealed nor satisfied or proceedings challenging the bond forfeiture have not been~~  
20           ~~timely filed, the prosecuting attorney may either file a rule to show cause with the~~  
21           ~~commissioner of insurance in accordance with R.S. 22:1441 or collect the judgment~~  
22           ~~in the same manner as a civil judgment.~~

23           (8) ~~Collection by insurance commissioner. Within thirty days of the filing~~  
24           ~~of a rule to show cause by the prosecuting attorney with the commissioner of~~  
25           ~~insurance, the commissioner of insurance shall notify the insurance company, the~~  
26           ~~surety or Lloyd's association, in writing, at the address of the home office of that~~  
27           ~~organization by certified mail, setting a time, place, and date of the commissioner's~~  
28           ~~hearing, which shall not be more than sixty days from the date of receipt of notice~~  
29           ~~from the prosecuting attorney. If after the hearing, the insurance commissioner finds~~

1       ~~that there is no just cause or legal reason for the surety's nonpayment, the~~  
2       ~~commissioner shall take any action deemed necessary for collection of the amount~~  
3       ~~owed, including suspension of the surety from doing business in the state of~~  
4       ~~Louisiana.~~

5               ~~(9) Nullity actions. Nullity actions pursuant to Code of Civil Procedure Art.~~  
6       ~~2001 et seq. not filed within the sixty days provided for filing summary proceedings~~  
7       ~~shall be brought by the use of ordinary civil proceedings.~~

8               ~~(10) Satisfaction of judgment of bond forfeiture. (a) For bonds which have~~  
9       ~~a face value under fifty thousand dollars, any judgment forfeiting the appearance~~  
10       ~~bond rendered according to this Section shall at any time, within six months, after~~  
11       ~~mailing of the notice of the signing of the judgment of bond forfeiture, be fully~~  
12       ~~satisfied and set aside upon the surrender or the appearance of the defendant. The~~  
13       ~~appearance of the defendant shall operate as a satisfaction of the judgment, and the~~  
14       ~~surrender shall operate as a satisfaction of the judgment and shall fully and finally~~  
15       ~~relieve the surety of any and all obligations under the bond. Any judgment forfeiting~~  
16       ~~the appearance bond rendered according to this Section shall at any time, within ten~~  
17       ~~days after the expiration of the six-month period provided to surrender the defendant,~~  
18       ~~be fully satisfied by the payment of the amount of the bail obligation without~~  
19       ~~incurring any interest, costs, or fees.~~

20               ~~(b)(i) For bonds which have a face value of fifty thousand dollars or more,~~  
21       ~~any judgment forfeiting the appearance bond rendered according to this Section shall~~  
22       ~~at any time within six months after mailing of the notice of the signing of the~~  
23       ~~judgment of bond forfeiture be fully satisfied and set aside upon the surrender or the~~  
24       ~~appearance of the defendant. The appearance of the defendant shall operate as a~~  
25       ~~satisfaction of the judgment and shall fully and finally relieve the surety of any and~~  
26       ~~all obligations under the bond. Any judgment forfeiting the appearance bond~~  
27       ~~rendered according to this Section shall at any time, within ten days after the~~  
28       ~~expiration of the six-month period provided to surrender the defendant, be fully~~



1 satisfied by the payment of the amount of the bail obligation without incurring any  
2 interest, costs, or fees:

3 (ii) ~~Any judgment forfeiting the appearance bond rendered according to this~~  
4 ~~Section shall at any time more than six months but within nine months after mailing~~  
5 ~~of the notice for the signing of the judgment of bond forfeiture, be satisfied and set~~  
6 ~~aside upon the surrender or the appearance of the defendant, and the payment in cash~~  
7 ~~of ten percent of the face amount of the bond. The appearance and payment of ten~~  
8 ~~percent in cash of the face amount of the bond shall operate as a satisfaction of the~~  
9 ~~judgment and shall fully and finally relieve the surety of any and all obligations~~  
10 ~~under the bond. Any judgment forfeiting the appearance bond rendered according~~  
11 ~~to this Section shall, at any time within ten days after the expiration of the nine-~~  
12 ~~month period provided to surrender the defendant, be fully satisfied by the payment~~  
13 ~~of the amount of the bail obligation without incurring any interest, costs, or fees.~~

14 ~~(11) Failure to satisfy judgment of bond forfeiture~~

15 ~~(a)A.~~ A. If a judgment of bond forfeiture rendered after June 22, 1993, against  
16 a commercial surety company has not been satisfied within two hundred ten days  
17 ~~from~~ after the date of mailing the notice of the signing of the judgment of bond  
18 forfeiture for bonds ~~which~~ that have a face value under fifty thousand dollars, or  
19 within four hundred days from mailing the notice of the signing of the judgment of  
20 bond forfeiture for bonds which have a face value of fifty thousand dollars or more,  
21 nor has a suspensive appeal or other proceeding challenging the bond forfeiture been  
22 timely filed, the prosecuting attorney may file with the ~~appropriate~~ district court, in  
23 the parish where the bond is forfeited, a rule to show cause why that commercial  
24 surety company should not be prohibited from executing criminal bail bonds before  
25 the court issuing the judgment of bond forfeiture. ~~The appropriate court is the court~~  
26 ~~where the bond is posted, whether in a district court or a court other than a district~~  
27 ~~court composed of more than one judge. If the appropriate court is not a district~~  
28 ~~court, it shall sit en banc on such a rule to show cause. If the bond is posted in a~~

1 court other than a district court and composed of only one judgeship position, then  
2 the rule shall be filed in the appropriate district court.

3 ~~(b)~~B. At the rule to show cause, the court may consider only issues which  
4 would interrupt the enforceability of the judgment. ~~Should the~~ The court ~~find~~ may  
5 issue an order enjoining the commercial surety company from posting criminal bail  
6 bonds before the court issuing the judgment of bond forfeiture if the judgment is not  
7 satisfied within ten days and if the court finds all of the following:

8 ~~(i)~~(1) A judgment of bond forfeiture has been rendered, after June 22, 1993,  
9 against the commercial surety;

10 ~~(ii)~~(2) Proper notice pursuant to ~~this Section~~ Code of Criminal Procedure  
11 Article 349.3 has been mailed;

12 ~~(iii)~~(3) No suspensive appeal has been taken;

13 ~~(iv)~~(4) The defendant has neither been surrendered nor appeared within ~~six~~  
14 months one hundred eighty days of the date of mailing of the notice of the signing  
15 of the judgment of bond forfeiture for bonds ~~which~~ that have a face value of fifty  
16 thousand dollars or more, and the defendant has ~~neither~~ not been surrendered  
17 together with ten percent of the total amount of the bond ~~or appeared together with~~  
18 ~~cash payment of ten percent of the total amount of the bond~~, more than ~~six months~~  
19 one hundred eighty days but within ~~nine months~~ two hundred seventy days; after the  
20 date of the mailing of the notice of the signing of the judgment of bond forfeiture;

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

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

1 together with payment in cash of ten percent of the total bond amount for bonds  
2 ~~which that have a face value of fifty thousand dollars or more, if applicable, then the~~  
3 ~~court may issue an order enjoining the commercial surety company from posting~~  
4 ~~criminal bail bonds before the court issuing the judgment of bond forfeiture if the~~  
5 ~~judgment is not satisfied within the ten days.~~

6 (c)C. The burden of proof at the hearing shall be upon the commercial surety  
7 by a preponderance of evidence and shall be limited to documents contained in the  
8 official court record where the judgment was rendered. The surety company may use  
9 evidence not contained in the record to show that it did not receive post-forfeiture  
10 notice or the post-forfeiture notice ~~required pursuant to this Section~~ was not properly  
11 mailed.

12 ~~(12) Cumulative actions. When a surety has cause to bring an action in~~  
13 ~~nullity or to set aside a bond forfeiture in two or more cases that are similarly~~  
14 ~~situated by facts and legal issues, he may file such actions as one cumulative action,~~  
15 ~~in summary proceedings and in the section of the criminal court where those cases~~  
16 ~~are pending pursuant to R.S. 15:85(5), Code of Criminal Procedure Article 345(I) or~~  
17 ~~(J), or an ordinary civil action pursuant to R.S. 15:85(9) when such action is within~~  
18 ~~the jurisdiction of the court and in the proper venue. All the actions cumulated must~~  
19 ~~be mutually consistent and employ the same form of procedure. The surety has the~~  
20 ~~burden of proving that the accumulation of the actions is appropriate and in the~~  
21 ~~interest of justice.~~

22 ~~(13) Improper cumulation effect. When the court lacks jurisdiction of or~~  
23 ~~when venue is improper as to one of the actions cumulated, that action shall be~~  
24 ~~dismissed. When the cumulation is improper for any other reason, the court may do~~  
25 ~~either of the following:~~

26 ~~(a) Order separate trials of the actions.~~

27 ~~(b) Order the moving party to elect which action or actions he shall proceed~~  
28 ~~with and to amend his pleadings so as to delete therefrom all allegations relating to~~

1 ~~the action or actions which he elects to discontinue. The penalty for noncompliance~~  
2 ~~with an order to amend is a dismissal of the entire cumulative action proceeding.~~

3 \* \* \*

4 §86. Forfeiture of cash, checks, or securities and discharge of the bail undertaking

5 A. When the court declares a forfeiture of cash, a check, a negotiable bond,  
6 or a money order which has been deposited as bail, the court shall order the  
7 disposition of such security in satisfaction of the bail obligation.

8 B. When the bail undertaking is discharged, the court shall order the security  
9 returned to the depositor. Upon presentation of a certified copy of the order, the  
10 custodian of the security shall pay or deliver it to the person named therein or to his  
11 order.

12 \* \* \*

13 §88. Appearance bond defined

14 The term "appearance bond" shall be taken and intended to mean every bail  
15 bond, recognizance, or other obligation, or deposit of cash, checks, negotiable bonds,  
16 or money orders, made or taken to secure the appearance of any person before any  
17 court; but in all cases where cash, checks, negotiable securities or money orders, or  
18 other movables have been deposited in lieu of bond with a surety, in case of  
19 discharge or forfeiture, the same shall be disposed of as otherwise provided by law.

20 Section 4. R.S. 22:1441(A)(2), (4), and (5), (C)(1) and (2)(b), (d), and (e), and (D)  
21 and 1585(A) are hereby amended and reenacted to read as follows:

22 §1441. Failure to timely satisfy claim under criminal bond contract

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

25 \* \* \*

26 (2) ~~Proper notice~~ Notice pursuant to ~~R.S. 15:85~~ Code of Criminal Procedure  
27 Article 349.3 has been mailed.

28 \* \* \*

1 (4) The defendant has neither been surrendered nor appeared within ~~six~~  
2 ~~months~~ one hundred eighty days of mailing of the notice of the signing of the  
3 judgment of bond forfeiture.

4 (5) More than ~~six months~~ one hundred eighty days has lapsed from the  
5 mailing of the ~~proper~~ notice of the signing of the judgment of bond forfeiture.

6 \* \* \*

7 C.(1)(a) The commissioner of insurance shall within ten days of receipt of  
8 the request for rule to show cause issued by the prosecuting attorney send notice to  
9 the commercial surety underwriter setting a date for a rule to show cause not less  
10 than three days nor more than ten days from the issuance of the commissioner's  
11 notice. At the rule to show cause, the commissioner may consider only issues which  
12 would interrupt the enforceability of the judgment.

13 (b) Within thirty days of the filing of a rule to show cause by the prosecuting  
14 attorney with the commissioner of insurance, the commissioner of insurance shall  
15 notify the insurance company, the commercial surety, or Lloyd's Association, in  
16 writing, at the address of the home office of that organization by certified mail,  
17 setting a time, place, and date of the commissioner's hearing, which shall not be more  
18 than sixty days from the date of receipt of notice from the prosecuting attorney. If  
19 after the hearing, the insurance commissioner finds that there is no just cause or legal  
20 reason for the surety's nonpayment, the commissioner shall take any action deemed  
21 necessary for collection of the amount owed, including suspension of the surety from  
22 doing business in the state of Louisiana.

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

26 \* \* \*

27 (b) ~~Proper notice~~ Notice pursuant to R.S. 15:85 Code of Criminal Procedure  
28 Article 349.3 has been mailed.

29 \* \* \*

1 (d) The defendant has neither been surrendered nor appeared within ~~six~~  
2 ~~months~~ one hundred eighty days of mailing of the notice of the signing of the  
3 judgment of bond forfeiture.

4 (e) More than ~~six months~~ has one hundred eighty days ~~has~~ lapsed from the  
5 mailing of the ~~proper~~ notice of the signing of the judgment of bond forfeiture.

6 \* \* \*

7 D. The burden of proof at the hearing shall be upon the commercial surety  
8 by a preponderance of evidence and shall be limited to documents contained in the  
9 official court record where the judgment was rendered. The surety company may use  
10 evidence not contained in the record to show that it did not receive post-forfeiture  
11 notice or the post-forfeiture notice required pursuant to ~~R.S. 15:85~~ Code of Criminal  
12 Procedure Article 349.3 was not properly mailed.

13 \* \* \*

14 §1585 Surrender for nonpayment of premium

15 A. Before a breach of an undertaking occurs, a surety or bail bond producer  
16 may surrender a defendant, or the defendant may surrender himself, to the official  
17 to whose custody the defendant was committed at the time the bail was given. The  
18 defendant may be surrendered without a return of the premium if he changes  
19 addresses without notifying his bail bond producer or surety, conceals himself,  
20 leaves the jurisdiction of the court without the permission of his bail bond producer  
21 or surety, fails to appear in any court at any time, or if the indemnitor seeks to relieve  
22 himself of his obligation on the bond or if the defendant is convicted of a felony but  
23 sentence is not yet imposed. A bail bond producer shall not surrender a client for  
24 nonpayment of a premium until thirty days after the date the bond is posted.

25 \* \* \*

26 Section 5. Code of Criminal Procedure Articles 322(D) and (E), 339, and 340(E) and  
27 R.S. 15:87 are hereby repealed in their entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Burrell

HB No. 286

**Abstract:** Provides for a comprehensive revision and consolidation of Louisiana's bail bond laws.

Proposed law provides for the revision and consolidation of Louisiana's bail bond law. The majority of changes are related to consolidation and redesignation of the provisions of present law and statutory references regarding the redesignation and consolidation of proposed law.

Present law (C.Cr.P. Arts. 312 and 339) provides for bail through a commercial surety, secured or unsecured personal surety, cash deposit and bail without surety; provides that bail must be posted in full; provides that the court must set a bail amount for each charge and permits the defendant to select the type of bail.

Proposed law merges these aspects of present law and permits the defendant to post his property as security.

Present law (C.Cr.P. Art. 313) defines surety per specific provisions of the Civil Code.

Proposed law (C.Cr.P. Art. 313) retains present law but specifies that the definition refers to its use in the Code of Criminal Procedure and cites, for the definition of a surety, the Civil Code without referring to specific provisions.

Present law (C.Cr.P. Art. 315) specifies that a personal surety must be a citizen and resident of Louisiana whose worth equals the amount specified on the bond. That worth must be exclusive of property exempt from execution and other liabilities. It provides that when there is more than one personal surety, the above applies to their aggregate worth.

Proposed law changes present law by changing "citizen and resident of La." to "natural person domiciled in this state"; uses the term "value" in place of "worth" and provides that property used to determine value must be located in the state and be subject to seizure.

Present law (C.Cr.P. Art. 318) defines secured personal surety.

Proposed law retains present law but specifies that immovable mortgaged as security for the bail obligation must be located in La.

Present law (C.Cr.P. Art. 319) permits a secured personal surety to use recorded proof of a security interest in immovable property as security for the bail obligation. Provides that certain requirements shall be waived only on holidays or weekends.

Proposed law deletes the holiday and weekend exception.

Proposed law specifically outlines the required procedure, form, and content of the required documents and provides a procedure for canceling the mortgage for secured personal sureties, authorizes the court to accept a security interest in movable property. Proposed law imposes sanctions for providing false or incorrect statements.

Present law (C.Cr.P. Art. 322) requires the defendant and a personal surety when signing a bail bond, to provide his residence address; requires a commercial surety, agent, or

bondsmen to provide a mailing address. Present law permits the defendant to appoint his counsel as his agent for service of notice to appear. Present law provides that by signing the bail bond the defendant and his surety waive with certain exceptions the right to notice exception.

Proposed law requires that the appointment of defense counsel as the defendant's agent shall be by joint affidavit.

Present law (C.Cr.P. Art. 326(B)) provides that in a misdemeanor case, the surety is relieved of all obligations under the bond upon conviction and sentencing; provides that in a felony case that the surety is relieved upon a plea of guilty or nolo contendere unless the surety agrees in writing to continue the bail undertaking or posts another bond; provides that the court may require the defendant, in all cases, to provide security to assure his presence at future stages; the court may in such case continue the existing bail upon the surety's written approval.

Proposed law (C.Cr.P. Art. 326(B)) retains present law in misdemeanor cases; provides that in the case of a guilty or nolo contendere plea in a felony case the court may continue the existing bond with the surety's approval which must be obtained after conviction.

Present law (C.Cr.P. Art. 330.2(E)) provides for the types of bail authorized for a sex offense.

Proposed law (C.Cr.P. Art. 330.2(E)) retains present law but rewords the types of bail to be consistent with the revisions to Art. 312.

Present law (C.Cr.P. Art. 332(A)) coordinates with C.Cr.P. Art. 326(B) and provides that a convicted defendant remains in jail unless released on bail as per Paragraphs B-D.

Proposed law (C.Cr.P. Art. 332(A)) retains present law and coordinates present law with Art. 326.

Present law (C.Cr.P. Art. 334.1) prohibits in a felony case, when a firearm is involved, the release of a defendant on his own recognizance.

Proposed law (C.Cr.P. Art. 334.1) changes present law to provide that the prohibited bail to release on his personal undertaking without security or with an unsecured personal surety.

Present law (C.Cr.P. Art. 334.3(A)(2)) provides for the release of a person who voluntarily surrenders following revocation or forfeiture only on bail through a commercial surety.

Proposed law (C.Cr.P. Art. 334.3(A)(2)) retains present law but rewords the type of bail to be consistent with the revisions to C.Cr.P. Art. 312.

Present law (C.Cr.P. Art. 338) provides that the order fixing bail shall be in writing; sets the type and amount for each charge; provides that the magistrate shall sign the order; provides that an order may issue upon motion of the state, defendant, or magistrate.

Proposed law (C.Cr.P. Art. 338) retains present law but specifies that a judge may also set the bail, sign the order, or initiate the motion to fix bail; changes "type and single amount of bail" for each charge to "amount of bail for each charge".

Present law (C.Cr.P. Arts. 338 and 340(E)) requires a contradictory hearing in certain cases, based on the parish's population, prior to fixing bail in a felony case.

Proposed law (C.Cr.P. Art. 338 and repeal of C.Cr.P. Art. 340(E)) deletes that requirement.



Present law (C.Cr.P. Art. 342) provides for a contradictory hearing in certain cases, based on the parish's population, prior to modifying bail.

Proposed law (C.Cr.P. Art. 342) deletes that requirement.

Present law (C.Cr.P. Art. 345(D)) provides if during the six-month period for the surrender of the defendant the defendant is incarcerated in another parish the defendant may file a motion to declare the obligations under the bond are satisfied. The motion must be filed within six months and must provide proof of the defendant's incarceration during the period allowed for the defendant's surrender.

Present law (C.Cr.P. Art. 345(D), (G), and (I)(2)) specifies a six-month period for the surrender of the defendant.

Proposed law retains present law but designates the time period as 180 days rather than six months.

Proposed law (C.Cr.P. Art. 345(D)(1)) retains present law but specifies that the motion shall be heard summarily.

Present law provides for a twelve-month period under certain circumstances.

Proposed law retains present law but specifies the period as 366 days.

Present law (C.Cr.P. Art. 344(A)) provides for immediate bond forfeiture upon defendant's nonappearance.

Proposed law (C.Cr.P. Art. 349(B)) retains present law but also permits the court to set the bond forfeiture hearing at a later date.

Present law provides for the proof necessary to obtain a judgment of bond forfeiture, the issuance of an arrest warrant upon the defendant's nonappearance, the notice of bond forfeiture, recordation of a judgment of bond forfeiture, the procedure for an action in nullity, the use of summary proceedings, cumulative actions, collection by the insurance commissioner, and the effect of improper cummulation.

Proposed law retains all these provisions of present law but renumbers and redesignates these provisions in proposed law for uniformity and clarity of the provisions of proposed law.

Proposed law designates the delay within which to bring summary proceedings as 180 days rather than six months.

Present law (R.S. 15:85(6)) provides for an appeal from the judgment of bond forfeiture and specifies the security required.

Proposed law (C.Cr.P. Art. 349.6) retains present law and provides for a 60-day period to suspensively appeal a judgment of bond forfeiture.

Present law (R.S. 15:85(7)) provides for the collection and enforcement of a judgment of bond forfeiture.

Proposed law (C.Cr.P. Art. 349.7) retains present law. Specifies that the delay is 190 days rather than six months plus 10 days.

Proposed law (C.Cr.P. Art. 349.8) retains the essence of present law and uses a 180-day period rather than six months, for satisfaction of a judgment of bond forfeiture.

Present law (R.S. 15:87) provides for nonforfeiture situations of an appearance bond.

Proposed law (C.Cr.P. Art. 349.9) changes present law to remove a private physician as a responsible officer. Proposed law specifies a 180-day period rather than six months within which to file a motion to set aside the judgment of bond forfeiture. Proposed law also adds a member of the Louisiana National Guard called to duty to the list of nonforfeiture situations.

Present law (C.Cr.P. Art. 955(F)) provides for the suspension of time limitations in certain situations.

Proposed law (C.Cr.P. Art. 955(F)) retains the present law but changes internal citations to reflect these revisions and changes months to days.

Present law (R.S. 15:85(11)) provides for the failure to satisfy a judgment of bond forfeiture.

Proposed law (R.S. 15:85) specifically provides that the appropriate court for the rule to show cause is the district court in the parish where the bond is forfeited. Proposed law updates an internal citation and calculates time periods in days rather than months.

Present law (R.S. 15:88) defines "appearance bond" and provides for the disposition, in the case of discharge or forfeiture, of items deposited in lieu of a bond.

Proposed law (R.S. 15:88) retains present law and includes movables among those items deposited in lieu of bond (as permitted by Art. 319(E)).

Present law (R.S. 22:1441(A)(2), (4), and (5), (C)(1)(a), (2)(b), (d) and (e), and (D)) provides for the failure to timely satisfy claim under a criminal bond contract.

Proposed law retains the present law, updates internal citations and substitutes 180 days for six months. Proposed law also provides for the commissioner of insurance to hold a show cause hearing and provides for remedies.

Present law (R.S. 22:1585(A)) provides that the defendant may be surrendered without a return of premium under certain circumstances.

Proposed law retains present law but adds surrender if the defendant is convicted but sentence is not imposed.

Present law (C.Cr.P. Art. 340(E)) provides for a contradictory hearing under certain circumstances in felony cases to fix bail.

Proposed law repeals present law.

(Amends C.Cr.P. Arts. 312, 313, 315, 318, 319, 322(A), (B), and (C), 326(B), 330.2(E), 332(A), 334.1, 334.3(A)(2), 338, 342, 344, 345(A),(B), (C), (D)(intro.para.) and (1) and (2), (G), (I)(intro paragraph) and (2), (J)(intro.para.) and (2) and 955(F); R.S. 13:846(A)(1)(c), R.S. 15:85, 86, 88, and R.S. 22:1441(A)(2), (4), and (5), (C)(1) and (2)(b), (d), and (e), and (D), and 1585(A); Adds C.Cr.P. Arts. 349 and 349.1-349.9; Repeals C.Cr.P. Arts. 322(D) and (E), 339, and 340(E) and R.S. 15:87)