

Regular Session, 2010

HOUSE BILL NO. 286

BY REPRESENTATIVES BURRELL, BARROW, AND HARDY

(On Recommendation of the Louisiana State Law Institute)

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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, and 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 in Paragraphs C and D of this Article, all bail must
15 be posted in the full amount ~~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 thereof.

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 Louisiana 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~~
30 ~~incorporeal moveable or immovable property,~~ the amount specified in the bail bond.

1 The ~~worth~~ value of the property of the surety shall be exclusive of the amount of any
2 ~~other bail bond on which he may be principal or surety, exclusive of~~ exclude
3 property exempt from execution, and shall be over and above all his other liabilities
4 including the amount of any other bail bond on which he may be principal or surety.

5 When there is more than one personal surety, the ~~above~~ requirements of this Article
6 shall apply to ~~their~~ the aggregate ~~worth~~ value of their property. No personal surety
7 shall charge a fee or receive any compensation for posting a personal surety bond ~~on~~
8 behalf of any person.

9 * * *

10 Art. 318. Secured personal surety

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

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

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

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

27 B. The mortgage is established upon the recordation of a written mortgage,
28 in authentic form satisfactory to the officer authorized to receive the bail, in the
29 mortgage records of the parish where the immovable is located that:

30 (1) Contains the name and signature of the person making the mortgage.

1 (2) Describes the immovable and declares that a mortgage is given over it
2 as security for the performance of the bail obligation.

3 (3) Certifies that the person making the mortgage owns the immovable and
4 states its value, in excess of the amount of all encumbrances against it.

5 (4) Attaches to it a copy of the order fixing the bail obligation.

6 C. The person providing the security shall deliver a certified copy of the
7 recorded statement establishing the mortgage and a mortgage certificate to the officer
8 authorized to receive the bail. The officer may require additional evidence of
9 ownership and value of the mortgaged property including a copy of the current tax
10 assessment.

11 D.(1) The recorder shall cancel the mortgage from his records upon the order
12 of the court.

13 (2) In all other cases, the effect of its recordation shall cease ten years after
14 its recordation unless it is reinscribed in the manner otherwise provided by law.

15 E. Any materially false or incorrect statements made by a person who
16 intentionally and knowingly gives a mortgage or security interest pursuant to this
17 Article shall be prima facie proof of a violation of the provisions of R.S. 14:125,
18 false swearing.

19 * * *

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

21 A. The defendant and personal surety ~~when~~ signing a bail bond shall write
22 the address at which each can be served under his ~~their~~ respective signature
23 ~~signatures. the address at which he resides~~ The address shall be conclusively
24 ~~presumed to continue for all proceedings on the bond, until he files in the proceeding~~
25 ~~in which the bond was given a written declaration changing the address.~~ The
26 defendant and his counsel may, by joint affidavit filed of record in the proceeding
27 in which the bond was given, appoint his counsel as his agent for service of notice
28 to appear. The appointment shall be conclusively presumed to continue until the
29 defendant files of record an affidavit revoking or changing the appointment. The
30 affidavit shall include the address at which to serve his counsel. A commercial

1 surety shall inscribe its proper mailing address on the face of the power of attorney
2 used to execute the bond. The agent or bondsman posting the bond shall write his
3 proper mailing address under his signature.

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

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

16 * * *

17 Art. 326. Condition of the bail undertaking

18 * * *

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

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

27 (3) In all cases, if necessary to assure the presence of the defendant at all
28 future stages of the proceedings, ~~if any,~~ the court may in its discretion, in accordance
29 with Article 332 require the defendant to post another bond or other acceptable
30 security, or may release the defendant on bail without surety as provided for in

1 Article 325. The court may continue the existing bail undertaking with the written
2 approval of the surety on the bond. Such approval must be obtained from the surety
3 ~~in accordance with the provisions of this Paragraph~~ after conviction.

4 * * *

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

6 * * *

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

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

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

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

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

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

18 * * *

19 Art. 332. Bail after conviction

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

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

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

27 * * *

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

29 ~~Notwithstanding any other provision of law to the contrary, the~~ The court
30 shall not release any defendant ~~on his own recognizance~~ who has been arrested for

1 a felony offense, an element of which is the discharge, use, or possession of a firearm
2 on his personal undertaking without security or with an unsecured personal surety.

3 * * *

4 Art. 334.3. Prohibition on subsequent bail obligation following revocation or
5 forfeiture; certain offenses

6 A.

7 * * *

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

11 * * *

12 Art. 338. Form and contents of bail order

13 An order fixing bail shall be in writing, set the type and a single amount of
14 bail for each charge, designate the officer or officers authorized to accept the bail,
15 and shall be signed by the magistrate. ~~The~~ An order fixing bail may issue on ~~motion~~
16 request of the state or defendant, or on the initiative of the judge or ~~magistrate's~~
17 magistrate own initiative. ~~In any parish with a population in excess of four hundred~~
18 ~~ninety thousand, as established by the 1990 U.S. Decennial Census, the magistrate~~
19 ~~or district court shall hold a contradictory hearing prior to fixing bail in any felony~~
20 ~~case.~~

21 * * *

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

23 The court having trial jurisdiction over the offense charged, on its own
24 motion or on motion of the state or defendant, for good cause, may either increase
25 or reduce the amount of bail, or require new or additional security. For purposes of
26 this Article, good cause for increase of bail specifically includes but is not limited
27 to the rearrest of the defendant on offenses alleged to have been committed while out
28 on bond. ~~However, in any parish with a population in excess of four hundred ninety~~
29 ~~thousand, as established by the 1990 U.S. Decennial Census, the district court shall~~
30 ~~hold a contradictory hearing prior to a modification of the bail order.~~ The

1 modification of any bail order wherein a bail bond has been posted by a criminal
 2 defendant and his sureties shall upon said modification terminate the liability of the
 3 defendant and his sureties under the previously existing bail contract. A new bail
 4 must be posted in the amount of the new bail order.

5 * * *

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

7 A. When a bail bond fixes ~~the initial~~ an appearance date, the defendant
 8 appears as ordered, and notice of the next appearance date is given to the defendant,
 9 no additional notice of that appearance date is required to be given to the defendant
 10 or the personal surety or the commercial surety or the agent or bondsman who posted
 11 the bond for the commercial surety, ~~if the defendant appears as ordered. If a~~
 12 ~~defendant fails to appear when a bail bond fixes the initial appearance date, no~~
 13 ~~additional preforfeiture notice for that date is required to be given to the defendant~~
 14 ~~or the personal surety or the commercial surety or the agent or bondsman who posted~~
 15 ~~the bond for the commercial surety. The bond shall be forfeited forthwith as per R.S.~~
 16 ~~15:85.~~

17 B.~~(1)~~ When a bail bond does not fix the appearance date, ~~and the presence~~
 18 ~~is required of a person who has been released on bail,~~ written notice of the time, date,
 19 and place the defendant, or his duly appointed agent, is first ordered by the court to
 20 appear shall be given to the defendant or his duly appointed agent and his personal
 21 surety or the commercial surety or the agent or bondsman who posted the bond for
 22 the commercial surety ~~shall be given written notice of the time, date, and place the~~
 23 ~~principal is required to appear.~~

24 ~~(2) The notice may be delivered to the defendant or his duly appointed agent~~
 25 ~~and the personal surety or the commercial surety or the agent or bondsman who~~
 26 ~~posted the bond for the commercial surety by an officer designated by the court, at~~
 27 ~~least two days prior to the day set for the appearance; or this notice may be mailed~~
 28 ~~by United States first class mail to the defendant or his duly appointed agent and his~~
 29 ~~personal surety or the commercial surety or the agent or bondsman who posted the~~
 30 ~~bond for the commercial surety, at least three days prior to the day set for the~~

1 ~~appearance. The notice shall be mailed to the defendant or his duly appointed agent~~
 2 ~~and his personal surety or the commercial surety or the agent or bondsman who~~
 3 ~~posted the bond for the commercial surety to the address designated pursuant to~~
 4 ~~Article 322.~~

5 (3) C. If the defendant appears as ordered and the proceeding is continued
 6 to a specific date, the defendant ~~or his duly appointed agent~~ and the personal surety
 7 or the commercial surety or the agent or bondsman who posted the bond for the
 8 commercial surety need not be given notice of the new appearance date. If the
 9 defendant fails to appear as ordered, or the proceeding is not continued to a specific
 10 date, the defendant or his duly appointed agent, the personal surety or the agent or
 11 bondsman who posted the bond for the commercial surety shall be given notice of
 12 the new appearance date.

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

16 D. Notice required pursuant to the provisions of this Article to the defendant
 17 and the personal surety or the commercial surety or the agent or bondsman who
 18 posted the bond for the commercial surety shall be made to the address provided
 19 pursuant to Article 322. Notice may be:

20 (1) Delivered by an officer designated by the court at least two days prior to
 21 the appearance date.

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

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

27 Art. 345. Surrender of defendant

28 A. A surety may surrender the defendant or the defendant may surrender
 29 himself, in open court or to the officer charged with his detention, at any time prior
 30 to forfeiture or within the time allowed by law for setting aside a judgment of

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

1 forfeiture of the bail bond. For the purpose of surrendering the defendant, the surety
 2 may arrest him. Upon surrender of the defendant, the officer shall detain the
 3 defendant in his custody as upon the original commitment and shall acknowledge the
 4 surrender by a certificate signed by him and delivered to the surety. ~~Thereafter,~~
 5 After compliance with the provisions of Paragraph F of this Article, the surety shall
 6 be fully and finally discharged and relieved of ~~any and all obligation~~ obligations
 7 under the bond.

8 B. If the defendant is incarcerated by the officer originally charged with his
 9 detention at any time prior to forfeiture or within the time allowed by law for setting
 10 aside a judgment for forfeiture of the bail bond, the surety may apply for and receive
 11 from any officer in charge of any facility in the state of Louisiana or a foreign
 12 jurisdiction charged with the detention of the defendant a letter verifying that the
 13 defendant is incarcerated, but only after the surety verifies to the satisfaction of the
 14 officer charged with the detention of the defendant as to the identity of the defendant.
 15 ~~Thereafter,~~ After compliance with the provisions of Paragraph F of this Article, the
 16 surety shall be fully and finally discharged and relieved of ~~any and all obligation~~
 17 obligations under the bond.

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

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

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

4 (2) The ~~defendant's~~ sureties of the defendant ~~produce to provide~~ the court
5 adequate proof of ~~defendant's~~ incarceration of the defendant, or the officer originally
6 charged with ~~defendant's~~ his detention verifies ~~the defendant's~~ his incarceration. A
7 letter of incarceration issued pursuant to this Article verifying that the defendant was
8 incarcerated within the ~~six-month~~ period allowed for the surrender of the defendant
9 at the time the defendant or the surety files the motion, shall be deemed adequate
10 proof of the ~~defendant's~~ incarceration of the defendant.

11 * * *

12 G. During the ~~six-month~~ period provided for surrendering the defendant, the
13 surety may request ~~from that~~ the officer originally charged with the detention of a
14 felony ~~defendant's detention~~ defendant ~~that place the name of the felony~~ defendant's
15 ~~name be placed~~ defendant into the National Crime Information Center registry.
16 ~~Upon such a request, the~~ The surety shall pay to ~~the that~~ officer ~~originally charged~~
17 ~~with the felony defendant's detention~~ a fee of twenty-five dollars for processing ~~such~~
18 the placement. If, after ~~the request by the surety and~~ payment of the twenty-five-
19 dollar fee, the ~~defendant's~~ name of the defendant is removed from the National
20 Crime Information Center registry without cause during the ~~six-month~~ period
21 provided for surrendering the defendant, the surety shall be relieved of all obligations
22 under the bond.

23 * * *

24 I. In addition to and notwithstanding any other provision of law, a surety
25 may seek an extension of time to surrender a defendant, or have the judgment of
26 bond forfeiture set aside by filing a motion in the criminal court of record and after
27 contradictory hearing with the district attorney and with proof satisfactory to ~~the~~
28 ~~discretion~~ of the court that a fortuitous event has occurred and that ~~such~~ the event has
29 made it impossible to perform ~~his performance~~ as required under the contract
30 ~~impossible to perform~~. A motion seeking relief pursuant to this Paragraph must be

1 filed within ~~twelve months~~ three hundred sixty-six days from the date of the
2 fortuitous event, excluding legal delays. The court in its discretion may do any of
3 the following:

4 * * *

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

10 * * *

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

26 * * *

27 (2) Grant an extension of time up to ~~twelve months~~ three hundred sixty-six
28 days from the expiration of the initial ~~six month~~ time period allowed for the
29 surrender of the defendant from the date of the mailing of proper notice of bond

1 forfeiture. If the court grants that extension, judicial interest shall be suspended
2 during that additional time period.

3 * * *

4 Art. 349. Forfeiture procedure

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

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

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

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

14 Art. 349.2. Proof necessary at bond forfeiture hearing

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

19 Art. 349.3. Notice of judgment

20 A.(1) After entering the fact of the signing of the judgment of bond forfeiture
21 in the court minutes, the clerk of court shall promptly mail notice of the signing of
22 the judgment of bond forfeiture. The notice of the signing of the judgment shall be
23 mailed by United States certified mail with return receipt affixed thereto to the
24 defendant, the personal surety, the agent or bondsman who posted the bond for the
25 commercial surety, and the commercial surety at the addresses designated in Article
26 322. Notice to the commercial surety shall include the power of attorney number
27 used to execute the bond without which the bond obligation of the commercial surety
28 shall be suspended until the power of attorney number is supplied, provided the
29 commercial surety provides notice to the clerk of court who mailed the notice to the
30 surety of the failure to include such number in the notice by certified mail not later

1 than thirty days following receipt of notice of the judgment. If the power of attorney
 2 number is not provided to the commercial surety within thirty days after the date of
 3 receipt by the clerk of court of the notice that it was not included in the notice of the
 4 judgment, the commercial surety shall be released from the bond obligation.

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

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

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

13 Art. 349.4. Recordation of judgment

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

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

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

29 B. The defendant and his sureties shall be entitled to assert defenses pursuant
 30 to Articles 345 and 349.9 by use of summary proceedings in the criminal matter

1 before the trial court that issued the judgment of bond forfeiture within one hundred
2 eighty days after the date of mailing the notice of the signing of the judgment of
3 bond forfeiture.

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

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

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

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

19 Art. 349.6. Appeals

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

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

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

1 Art. 349.7. Enforcement of judgment

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

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

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

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

23 Art. 349.8. Satisfaction of judgment of bond forfeiture

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

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

5 B.(1) For bonds with a face value of fifty thousand dollars or more, a
 6 judgment forfeiting the appearance bond shall, at any time within one hundred eighty
 7 days after the date of mailing the notice of the signing of the judgment of bond
 8 forfeiture, be fully satisfied and set aside upon the surrender or the appearance of the
 9 defendant. The appearance of the defendant shall satisfy the judgment, and the
 10 surrender shall relieve the surety of all obligations under the bond and the judgment.

11 A judgment forfeiting the appearance bond shall, at any time within ten days after
 12 the expiration of the period provided to surrender the defendant, be fully satisfied by
 13 the payment of the amount of the bail obligation without incurring any interest, costs,
 14 or fees.

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

26 Art. 349.9. Nonforfeiture situations

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

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

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

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

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

5 B. An affidavit by the jailer, warden, or other responsible officer where the
6 principal is detained, or commanding officer, attesting to the cause of the failure to
7 appear of the defendant shall be considered adequate proof of the inability to appear
8 by the defendant.

9 C. If a judgment of bond forfeiture is rendered while the defendant is
10 prevented from appearing for any reason enumerated in this Article, and if the
11 defendant or his sureties file a motion to set aside the judgment of bond forfeiture
12 within one hundred eighty days after the date of the mailing the notice of the signing
13 of the judgment of bond forfeiture, and it is shown to the satisfaction of the court that
14 the defendant was prevented from attending for any cause enumerated in this Article,
15 the court shall declare the judgment of bond forfeiture null and void.

16 * * *

17 Art. 955. Suspension of time limitations in affected courts; ninety days; rescision;
18 extensions; exceptions

19 * * *

20 F. When the supreme court makes the determination and orders an
21 emergency session of court at a location which are both feasible and practical outside
22 the parish or territorial jurisdiction of the affected court, pursuant to Article 944, in
23 addition to the provisions of Paragraph A of this Article, the supreme court may
24 order an extension of time not to exceed ~~fifteen months~~ four hundred fifty days for
25 the surrender of the defendant as provided for in ~~R.S. 15:85~~ Code of Criminal
26 Procedure Article 349.8. This extension of time is in addition to the ~~six months~~ one
27 hundred eighty days provided for in ~~R.S. 15:85~~ Article 349.8 and the ninety days
28 provided for in Paragraph A of this Article, and also applies to the deadlines for
29 filing motions to set aside judgments of bond forfeiture.

30 * * *

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~~
30 ~~required by Article 344 of the Code of Criminal Procedure, shall immediately and~~

1 ~~forthwith issue a warrant for the arrest of the person failing to appear and order a~~
 2 ~~judgment decreeing the forfeiture of the bond and against the defendant and his~~
 3 ~~sureties in solid for the full amount of the bond.~~

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

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

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

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

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

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

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

28 ~~(b) After mailing the notice of the signing of the judgment of bond forfeiture,~~
 29 ~~the clerk of court shall execute an affidavit of the mailing and place the affidavit and~~
 30 ~~the return receipts in the record.~~

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

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

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

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

23 ~~(6) Appeals:~~

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

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

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

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

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

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

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

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

27 ~~(ii) Any judgment forfeiting the appearance bond rendered according to this~~
 28 ~~Section shall at any time more than six months but within nine months after mailing~~
 29 ~~of the notice for the signing of the judgment of bond forfeiture, be satisfied and set~~
 30 ~~aside upon the surrender or the appearance of the defendant, and the payment in cash~~

1 of ten percent of the face amount of the bond. The appearance and payment of ten
 2 percent in cash of the face amount of the bond shall operate as a satisfaction of the
 3 judgment and shall fully and finally relieve the surety of any and all obligations
 4 under the bond. Any judgment forfeiting the appearance bond rendered according
 5 to this Section shall, at any time within ten days after the expiration of the nine-
 6 month period provided to surrender the defendant, be fully satisfied by the payment
 7 of the amount of the bail obligation without incurring any interest, costs, or fees.

8 (11) Failure to satisfy judgment of bond forfeiture

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

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

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

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

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

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

14 ~~(v)~~(5) Two hundred ten days have passed since the date of the mailing of
 15 ~~proper~~ the notice of the signing of the judgment of bond forfeiture for bonds ~~which~~
 16 that have a face value under fifty thousand dollars, or four hundred days have passed
 17 since the date of the mailing of ~~proper~~ the notice of the signing of the judgment of
 18 bond forfeiture for bonds ~~which~~ that have a face value of fifty thousand dollars or
 19 more; and.

20 ~~(vi)~~(6) The judgment of bond forfeiture has not been satisfied by payment
 21 of the full amount for bonds ~~which~~ that have a face value under fifty thousand
 22 dollars, or has not been satisfied by the surrender or the appearance of the defendant
 23 together with payment in cash of ten percent of the total bond amount for bonds
 24 ~~which~~ that have a face value of fifty thousand dollars or more, if applicable; ~~then the~~
 25 ~~court may issue an order enjoining the commercial surety company from posting~~
 26 ~~criminal bail bonds before the court issuing the judgment of bond forfeiture if the~~
 27 ~~judgment is not satisfied within the ten days.~~

28 ~~(e)~~C. The burden of proof at the hearing shall be upon the commercial surety
 29 by a preponderance of evidence and shall be limited to documents contained in the
 30 official court record where the judgment was rendered. The surety company may use

1 evidence not contained in the record to show that it did not receive post-forfeiture
2 notice or the post-forfeiture notice ~~required pursuant to this Section~~ was not properly
3 mailed.

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

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

- 18 ~~(a) Order separate trials of the actions.~~
- 19 ~~(b) Order the moving party to elect which action or actions he shall proceed~~
20 ~~with and to amend his pleadings so as to delete therefrom all allegations relating to~~
21 ~~the action or actions which he elects to discontinue. The penalty for noncompliance~~
22 ~~with an order to amend is a dismissal of the entire cumulative action proceeding.~~

23 * * *

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

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

28 B. When the bail undertaking is discharged, the court shall order the security
29 returned to the depositor. Upon presentation of a certified copy of the order, the

1 custodian of the security shall pay or deliver it to the person named therein or to his
2 order.

3 * * *

4 §88. Appearance bond defined

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

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

13 §1441. Failure to timely satisfy claim under criminal bond contract

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

16 * * *

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

19 * * *

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

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

25 * * *

26 C.(1) ~~The commissioner of insurance shall within ten days of receipt of the~~
27 ~~request for rule to show cause issued by the prosecuting attorney send notice to the~~
28 ~~commercial surety underwriter setting a date for a rule to show cause not less than~~
29 ~~three days nor more than ten days from the issuance of the commissioner's notice.~~
30 ~~At the rule to show cause, the commissioner may consider only issues which would~~

1 ~~interrupt the enforceability of the judgment.~~ Within thirty days of the filing of a rule
 2 to show cause by the prosecuting attorney with the commissioner of insurance, the
 3 commissioner of insurance shall notify the insurance company, the commercial
 4 surety, or Lloyd's Association, in writing, at the address of the home office of that
 5 organization by certified mail, setting a time, place, and date of the hearing, which
 6 shall not be more than sixty days from the date of receipt of notice from the
 7 prosecuting attorney. If after the hearing, the hearing officer finds that there is no
 8 just cause or legal reason for the surety's nonpayment, the commissioner shall take
 9 any action deemed necessary for collection of the amount owed, including
 10 suspension of the surety from doing business in the state of Louisiana.

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

14 * * *

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

17 * * *

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

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

23 * * *

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

30 * * *

1 §1585. Surrender for nonpayment of premium

2 A. Before a breach of an undertaking occurs, a surety or bail bond producer
3 may surrender a defendant, or the defendant may surrender himself, to the official
4 to whose custody the defendant was committed at the time the bail was given. The
5 defendant may be surrendered without a return of the premium if he changes
6 addresses without notifying his bail bond producer or surety, conceals himself,
7 leaves the jurisdiction of the court without the permission of his bail bond producer
8 or surety, fails to appear in any court at any time, or if the indemnitor seeks to relieve
9 himself of his obligation on the bond or if the defendant is convicted of a felony but
10 sentence is not yet imposed. A bail bond producer shall not surrender a client for
11 nonpayment of a premium until thirty days after the date the bond is posted.

12 * * *

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____