

2016 Regular Session

SENATE BILL NO. 281

BY SENATOR WARD

BONDS. Provides relative to bail bond forfeiture hearings. (8/1/16)

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AN ACT

To amend and reenact R.S. 22:1441, relative to bail bond forfeiture proceedings; to provide for forfeiture hearings before the Division of Administrative Law; to provide for notice by mail; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1441 is hereby amended and reenacted to read as follows:

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

A. Any prosecuting attorney may file with the commissioner ~~of insurance's office a rule to show cause~~ **request for the commissioner to issue an order to pay a judgment of bond forfeiture** if all the following are true:

- (1) A judgment of bond forfeiture has been rendered after June 22, 1993, against the commercial surety underwriter.
- (2) Notice pursuant to Code of Criminal Procedure Article 349.3 has been mailed.
- (3) No suspensive appeal has been taken.
- (4) The defendant has neither been surrendered nor appeared within one hundred eighty days of mailing of the notice of the signing of the judgment of bond

1 forfeiture.

2 (5) More than one hundred eighty days has lapsed from the mailing of the
3 notice of the signing of the judgment of bond forfeiture.

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

5 B. The prosecuting attorney shall attach adequate documentation to support
6 his affidavit and submit it to the commissioner of insurance.

7 C. (1) ~~Within thirty days of the filing of a rule to show cause by the~~
8 ~~prosecuting attorney with the commissioner of insurance, the commissioner of~~
9 ~~insurance shall notify the insurance company, the commercial surety, or Lloyd's~~
10 ~~Association, in writing, at the address of the home office of that organization by~~
11 ~~certified mail, setting a time, place, and date of the hearing, which shall not be more~~
12 ~~than sixty days from the date of receipt of notice from the prosecuting attorney. If~~
13 ~~after the hearing, the hearing officer finds that there is no just cause or legal reason~~
14 ~~for the surety's nonpayment, the commissioner shall take any action deemed~~
15 ~~necessary for collection of the amount owed, including suspension of the surety from~~
16 ~~doing business in the state of Louisiana. **The commissioner shall promptly mail**~~
17 ~~**the affidavit and all attachments with the commissioner's order to pay the bail**~~
18 ~~**bond forfeiture to the insurance company or commercial surety.**~~

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

22 (a) ~~A judgment of bond forfeiture has been rendered after June 22, 1993,~~
23 ~~against the commercial surety underwriter.~~

24 (b) ~~Notice pursuant to Code of Criminal Procedure Article 349.3 has been~~
25 ~~mailed.~~

26 (c) ~~No suspensive appeal has been taken.~~

27 (d) ~~The defendant has neither been surrendered nor appeared within one~~
28 ~~hundred eighty days of mailing of the notice of the signing of the judgment of bond~~
29 ~~forfeiture.~~

1 ~~(e) More than one hundred eighty days has lapsed from the mailing of the~~
2 ~~notice of the signing of the judgment of bond forfeiture.~~

3 ~~(f) The judgment of bond forfeiture has not been satisfied by payment.~~
4 **Within thirty days after the commercial surety or insurance company is notified**
5 **by the commissioner of the order to pay bail bond forfeiture, the commercial**
6 **surety or insurance company shall provide to the commissioner evidence that**
7 **the forfeiture was paid, or that a motion contesting the validity of the bail bond**
8 **forfeiture was filed in the court where the judgment of bail bond forfeiture was**
9 **rendered. The commercial surety or insurance company may, for good cause**
10 **shown, petition the commissioner in writing for an extension of time. Any**
11 **extension shall be at the sole discretion of the commissioner.**

12 **(3) If, after thirty days, the commercial surety or insurance company has**
13 **not provided evidence that the judgment of bail bond forfeiture was paid or that**
14 **a motion contesting the validity of the judgment of bail bond forfeiture was**
15 **filed, the commissioner's order to pay bail bond forfeiture shall be final and the**
16 **commissioner may take action pursuant to R.S. 22:18. The commercial surety**
17 **or insurance company shall have thirty days from the date of the**
18 **commissioner's order to pay the judgment of bail bond forfeiture or to file a**
19 **petition of appeal to the division of administrative law to hold a hearing.**

20 **(4) At the hearing, the administrative law judge shall determine whether**
21 **or not each of the following is true:**

22 **(a) A judgment of bond forfeiture has been rendered after June 22, 1993,**
23 **against the commercial surety underwriter.**

24 **(b) Notice pursuant to Code of Criminal Procedure Article 349.3 has**
25 **been mailed.**

26 **(c) No suspensive appeal has been taken.**

27 **(d) The defendant has neither been surrendered nor appeared within one**
28 **hundred eighty days of mailing of the notice of the signing of the judgment of**
29 **bond forfeiture.**

1 **(e) More than one hundred eighty days has lapsed from the mailing of**
2 **the notice of the signing of the judgment of bond forfeiture.**

3 D. **(1)** The burden of proof at the hearing shall be upon the commercial surety
4 **or insurance company** by a preponderance of evidence and shall be limited to
5 documents contained in the official court record where the judgment was rendered.
6 The **commercial** surety **or insurance** company may use evidence not contained in
7 the record to show that it did not receive post forfeiture notice or the post forfeiture
8 notice required pursuant to Code of Criminal Procedure Article 349.3 was not
9 properly mailed.

10 **(2) If the commercial surety or insurance company does not meet this**
11 **burden of proof, the administrative law judge shall enter an order upholding**
12 **and confirming the commissioner's order to pay the judgment of bail bond**
13 **forfeiture to the commercial surety or insurance company to pay the bond**
14 **forfeiture.**

15 E. A commercial surety **or insurance company** shall pay an administrative
16 fine of five hundred dollars to the Department of Insurance for each hearing to show
17 cause in which the commercial surety is a named party when the judgment has been
18 paid after the issuance of a rule to show cause that meets the requirements of
19 Subsection A of this Section.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Cooper.

	DIGEST	
SB 281 Original	2016 Regular Session	Ward

Present law allows any prosecuting attorney to file with the commissioner's office a rule to show cause provided all of the following are true:

- (1) A judgment of bond forfeiture has been rendered after June 22, 1993, against the commercial surety underwriter.
- (2) Notice pursuant to Code of Criminal Procedure Article 349.3 has been mailed.
- (3) No suspensive appeal has been taken.
- (4) The defendant has neither been surrendered nor appeared within 180 days of mailing of the notice of the signing of the judgment of bond forfeiture.

- (5) More than 180 days has lapsed from the mailing of the notice of the signing of the judgment of bond forfeiture.
- (6) The judgment of bond forfeiture has not been satisfied by payment.

Proposed law retains present law.

Present law requires the commissioner to provide written notice of a hearing to show cause to the insurance company, the commercial surety, or Lloyd's Association within 30 days of the filing of a rule to show cause. Further provides that if after the hearing, the hearing officer finds that there is no just cause or legal reason for the surety's nonpayment, the commissioner shall take any action deemed necessary for the collection of the amount owed, including suspension of the surety from doing business in La.

Proposed law deletes present law.

Present law requires the commissioner to order the commercial surety underwriter to pay immediately the judgment of bond forfeiture, if the commissioner finds that all of the following are true:

- (1) A judgment of bond forfeiture has been rendered after June 22, 1993, against the commercial surety underwriter.
- (2) Notice pursuant to Code of Criminal Procedure Article 349.3 has been mailed.
- (3) No suspensive appeal has been taken.
- (4) The defendant has neither been surrendered nor appeared within 180 days of mailing of the notice of the signing of the judgment of bond forfeiture.
- (5) More than 180 days have lapsed from the mailing of the notice of the signing of the judgment of bond forfeiture.
- (6) The judgment of bond forfeiture has not been satisfied by payment.

Proposed law deletes present law.

Proposed law requires a commercial surety or insurance company to provide to the commissioner evidence that the forfeiture was paid, or that a motion contesting the validity of the bail bond forfeiture was filed with the court where the judgement of bail bond forfeiture was rendered within 30 days after the commercial surety or insurance company is notified by the commissioner of the order to pay the bail bond forfeiture.

Proposed law provides if, after 30 days, the commercial surety has not provided evidence to the commissioner that the judgement of bail bond forfeiture was paid or that a motion contesting the validity of the judgment was filed, the commissioner's order to pay the forfeiture becomes final.

Proposed law grants the commercial surety or insurance company 30 days from the date of the commissioner's order to pay the judgement or to file a petition of appeal to the division of administrative law to hold a hearing. Further provides that the administrative law judge shall determine whether or not each of the following is true:

- (1) A judgment of bond forfeiture has been rendered after June 22, 1993, against the commercial surety underwriter.
- (2) Notice pursuant to Code of Criminal Procedure Article 349.3 has been mailed.

- (3) No suspensive appeal has been taken.
- (4) The defendant has neither been surrendered nor appeared within 180 days of mailing of the notice of the signing of the judgment of bond forfeiture.
- (5) More than 180 days has lapsed from the mailing of the notice of the signing of the judgment of bond forfeiture.

If the commercial surety or insurance company does not meet their burden of proof, proposed law requires the administrative law judge to enter an order upholding and confirming the commissioner's order to pay the judgment of bail bond forfeiture.

Effective August 1, 2016.

(Amends R.S. 22:1441)