

SENATE BILL NO. 223

INTRODUCED BY G. VANCE

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BAIL LAWS; PROVIDING THAT AFTER
 5 BAIL MODIFICATION A COURT MAY ONLY ACCEPT THE TOTAL AMOUNT OF ADJUSTED BAIL;
 6 PROVIDING THAT WHEN BAIL IS POSTED USING PERSONAL PROPERTY THE VALUE OF THE PROPERTY
 7 MUST BE TWICE THE AMOUNT OF THE BAIL; PROVIDING THAT THE SURETY COMPANY MAY NOT
 8 ARREST THE DEFENDANT PRIOR TO THE ORDER OF FORFEITURE WHEN THE DEFENDANT OWES A
 9 DEBT TO THE SURETY COMPANY FOR BREACH OF CONTRACT, UPON REQUEST OF AN INDEMNITOR,
 10 OR FOR A VIOLATION OF A CONDITION OF RELEASE; CHANGING THE TIME PERIOD THAT THE
 11 DEFENDANT MAY SURRENDER; AND AMENDING SECTIONS ~~46-9-311, 46-9-401, 46-9-503, AND 46-9-510,~~
 12 MCA."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 ~~Section 1.~~ Section 46-9-311, MCA, is amended to read:

17 ~~"46-9-311. Reduction, increase, revocation, or substitution of bail.~~ (1) Upon application by the state
 18 or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail,
 19 substitute one bail for another, alter the conditions of the bail, or revoke bail. When bail is increased, reduced,
 20 substituted, or revoked, a court may accept only the total amount of the adjusted bail in a form allowable under
 21 46-9-401.

22 ~~(2)~~ Reasonable notice of such application must be given to the opposing parties or their attorneys by the
 23 applicant."

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25 ~~Section 2.~~ Section 46-9-401, MCA, is amended to read:

26 ~~"46-9-401. Forms of bail.~~ (1) Bail may must be furnished in the following ways:

27 ~~(a)~~ by a deposit with the court of an amount at the time of posting and prior to release of the full amount
 28 equal to the total required bail of cash, stocks, bonds, or certificates of deposit, or other personal property that
 29 is valued at twice the amount of the bail and approved by the court;

30 ~~(b)~~ by pledging real estate situated within the state with an unencumbered equity, not exempt, owned

- 1 by the defendant or sureties at a value double the amount of the required bail;
- 2 ~~—— (c) by posting a written undertaking executed by the defendant and by two sufficient sureties;~~
- 3 ~~—— (d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on~~
- 4 ~~behalf of the surety company; or~~
- 5 ~~—— (e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any~~
- 6 ~~offense as provided in 61-5-214 and if the offender is the holder of an unexpired driver's license.~~
- 7 ~~—— (2) The amount of the bond must ensure the appearance of the defendant at all times required through~~
- 8 ~~all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant~~
- 9 ~~to 46-9-107, must remain in effect until final sentence is pronounced in open court.~~
- 10 ~~—— (3) This chapter does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a~~
- 11 ~~case in which the surety feels insecure in accepting liability for the defendant.~~
- 12 ~~—— (4) Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to~~
- 13 ~~the defendant:~~
- 14 ~~—— (a) after the required bail has been posted or there has been a final determination of the charge; and~~
- 15 ~~—— (b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the~~
- 16 ~~court."~~

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18 **Section 1.** Section 46-9-503, MCA, is amended to read:

19 **"46-9-503. Violation of release condition -- forfeiture.** (1) If a defendant violates a condition of release,

20 including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of

21 release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release.

22 Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

23 (2) If a defendant fails to appear before a court as required and bail has been posted, the judge may

24 declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's

25 sureties at their last-known address within 10 working days or the bond becomes void and must be released and

26 returned to the surety within 5 working days.

27 (3) If at any time within ~~90~~ 180 150 days after the NOTICE OF THE ORDER OF forfeiture the defendant's

28 sureties surrender the defendant pursuant to 46-9-510 or appear and satisfactorily excuse the defendant's failure

29 to appear, the judge shall direct the forfeiture to be discharged without penalty. If at any time within ~~90~~ 180 150

30 days after the NOTICE OF THE ORDER OF forfeiture the defendant appears and satisfactorily excuses the defendant's

1 failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

2 (4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or
3 subsection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under
4 subsection (3).

5 (5) A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or
6 violations of release conditions other than failure to appear. The original bond is in effect pursuant to 46-9-121
7 and is due and payable only if the surety fails, after ~~90~~ ~~180~~ 150 days from NOTICE OF THE ORDER OF forfeiture, to
8 surrender the defendant or if the defendant fails to appear on the defendant's own within the same time period."
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10 **Section 2.** Section 46-9-510, MCA, is amended to read:

11 **"46-9-510. Surrender of defendant.** (1) At any time before the NOTICE OF THE order of forfeiture of bail
12 or within ~~90~~ ~~180~~ 150 days after the NOTICE OF THE order of forfeiture:

13 (a) the defendant may surrender to the court or any peace officer of this state; or

14 (b) the surety company or its agent may arrest the defendant and surrender the defendant to the court,
15 any peace officer, or any detention center facility of this state, except that the defendant may not be ARRESTED
16 AND surrendered BY THE SURETY COMPANY OR ITS AGENT during the period before the order of forfeiture is issued
17 when the defendant has unpaid premium or fees of any kind that are owed to the surety company or its agent.
18 FOR BREACH OF ANY CONTRACT BETWEEN THE DEFENDANT AND THE SURETY COMPANY OR ITS AGENT, INCLUDING BREACH
19 OF A PREMIUM DEFERMENT AGREEMENT; UPON REQUEST OF AN INDEMNITOR; OR FOR VIOLATION OF A CONDITION OF
20 RELEASE OTHER THAN A FAILURE TO APPEAR.

21 (2) NOTHING IN SUBSECTION (1)(B) MAY BE CONSTRUED AS PROHIBITING A SURETY OR ITS AGENT FROM
22 SURRENDERING A DEFENDANT AND RECEIVING EXONERATION OF BAIL IN THE EVENT THAT A DEFENDANT FAILS TO APPEAR
23 OR BECOMES INCARCERATED ON NEW CHARGES OR FOR VIOLATIONS OF RELEASE CONDITIONS.

24 ~~(2)~~(3) The peace officer or detention center facility shall detain the defendant in custody as upon
25 commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the
26 defendant. The court shall then order the bail exonerated."

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