

Alabama bail laws

1. Applicable Statutes

A. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE.
CHAPTER 13. BAIL. ARTICLES 1-6.

2. Licensing Requirements for Agents

A. The Code of Alabama, Alabama Rules of Criminal Procedure, provides a Table of Rules With Applicable Forms. Form 26 gives a CERTIFICATE OF PROFESSIONAL BONDSMAN and lists the requirements of eligibility to become a bondsman.

1. Be a resident of the State of Alabama.
2. Have a sufficient financial net worth to satisfy the financial obligations which to enter into as a surety, taking into consideration all other outstanding obligations and liabilities.
3. No one other person has any financial interest, either direct or indirect, in my bonding business.
4. Not been convicted of a felony or a crime involving moral turpitude.
5. No outstanding final forfeitures against me arising out of any surety undertaking.
6. Have not, within the period of two (2) years immediately preceding application date, violated any provisions of the Alabama Rules of Criminal Procedure, relating to the making of bonds or any Court order.
7. Not, nor an agent for, an attorney, a judicial official, or a person authorized to accept an appearance bond.

(False statements are punishable as perjury).

B. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 2. ENTRY AND RETURN. §15-13-22.

Gives the qualifications for bail, the bond required for bondsmen and qualifications when sufficiency of bail doubtful.

1) Each person signing as surety an undertaking of bail must be:

- A resident of this state

- Worth, exclusive of property exempt from execution, the amount expressed in the undertaking;
- The court or magistrate, in taking bail, may allow more than two persons to justify as bail in amounts less than that expressed in the undertaking, provided the whole is equivalent to two sufficient bails.
- The court or magistrate may allow a corporation, foreign or domestic, qualified to do a bonding business in this state and authorized to execute the undertaking of bail, to execute such bail.
- Every person engaged in the business of making bail bonds and charging therefore, except corporations qualified to do a bonding business in this state, shall be required to furnish a bond with corporate surety in the amount of \$25,000.00 (\$10,000.00 in Cullman County), to be approved by the probate judge of each county in which such person engages in such business.
- When there is a reasonable doubt as to the sufficiency of the bail, they may be required by the court or magistrate to answer fully on oath as to their qualifications.

C. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 2. ENTRY AND RETURN. §15-13-24.

Establishes that judicial and ministerial officers are prohibited from becoming surety for bail or signing bonds, etc.

D. The regulatory body is the Insurance Department.

3. Notice of Forfeiture

A. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 11. PRELIMINARY HEARINGS. §15-11-4.

Sets forth that if the defendant fails to appear, the default on the undertaking of bail shall be certified by the district court to the circuit court. The certificate is then evidence of the default of the defendant.

B. TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 5. FORFEITURE. § 15-13-80.

Deals specifically with forfeiture of money, if money is deposited in lieu of bail.

- If defendant fails to appear, money deposited instead of bail is forfeited and the forfeiture is not discharged or remitted
- The clerk must, at the end of 30 days, unless the court has before that

time discharged the forfeiture, pay over the money deposited to a representative of the court.

- The court shall then, without any notice to the defendant, enter judgment for the entire sum deposited.

C. TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 5. FORFEITURE. §15-13-81.

Establishes provisions for a "Conditional judgment" when a bond is deposited in lieu of money. Here, notice to the defendant is required.

- The clerk must issue notice of the entry of a judgment to each defendant.
- The notice required by subsection may be executed by the sheriff of any county and
- Must be returned by the officer executing it, with his proper return thereon endorsed,
- On or before the day and date fixed or specified in the notice.
- If the notice is not served on any of the parties to the undertaking, such other notices as are necessary may from time to time be issued; but two returns of "not found" by the proper officer are equivalent to personal service.

4. Alloted Time between Forfeiture Declaration and Payment Due Date

A. ALABAMA RULES OF CRIMINAL PROCEDURE. Rule 7.6.

Sets forth that sureties have 28 days to make a written show of cause as to why a defendant failed to appear.

5. If a defendant fails to appear, the court shall notify the defendant and any surety and shall require them to show cause by filing a written response with the clerk of the court within twenty-eight (28) days of the date of service of the notice as to why the bond should not be forfeited.

6. The notice may be served in the same manner as provided in Rule 3.4 for the service of a summons and must be returned by the person serving it with his endorsement, within twenty- eight (28) days of the date of issuance or within five (5) days of service, whichever period of time is shorter.

7. If the notice is not served, such other notices as are necessary may from time to time be issued, but two returns of "not found" by the proper officer are equivalent to personal service.

8. If a written response is filed within the time allowed, the court shall set a hearing to determine whether the bond should be forfeited.

9. If at the hearing the violation is not excused for good cause, or, if after twenty-eight (28) days from the date of service, no written response has been filed, the court may enter a final judgment forfeiting all or part of the amount of the bond or cash deposit.

B. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 6. ALABAMA BAIL REFORM ACT OF 1993. DIVISION 6. FORFEITURE -- PROCEEDINGS THEREON. § 15-13-136.

Provides that issue and service of conditional forfeiture must occur within 90 days to be valid (see Forfeiture Defenses, F.)

5. Forfeiture Defenses

A number of forfeiture defenses are available in Alabama.

A. ALABAMA RULES OF CRIMINAL PROCEDURE Rule 7.6 (e) EXONERATION.

If the court finds, at any time, that there is no further need for an appearance bond, the court shall exonerate the bond and order the return of any security deposited.

B. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 4. EFFECT OF UNDERTAKING AND DISCHARGE OF BAIL. §15-13-62.

Establishes that at any time before a conditional judgment is entered, bail may exonerate themselves by surrendering the defendant.

15-13-64. Surrender of the defendant to a sheriff is required to exonerate bail.

C. CODE OF ALABAMA TITLE 12. COURTS. CHAPTER 22. APPELLATE PROCEEDINGS. ARTICLE 2. CRIMINAL CASES. DIVISION 7. DISPOSITION OF APPEALS. § 12-22-242. If judgment is reversed, an appellate court may order a defendant to be discharged.

If the defendant is ordered to be discharged, no forfeiture can be taken on his undertaking of bail.

D. Abraham v. Nunn, 42 Ala. 51 (Ala.1868). Holds that death of an accused good defense to forfeiture of bail.

E. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 5. FORFEITURE. §15-13-82. Deals with when conditional

judgments can be set aside and when excuses for default can be heard.

6. Excuses for default on bail must be heard by the court on application at any time when not engaged in other business.

7. When a conditional judgment is set aside, no cost may be imposed on the defendants.

8. This section has no application, however, where money is deposited instead of bail.

9. (The notes following this section discuss sufficiency and insufficiency of excuses for default).

§ 15-13-118. Deals with arrest and delivery of a defendant after a conditional judgement has been entered.

10. The arrest and delivery of a defendant to the authorized jail will not exonerate the surety unless, in the judgment of the court, good cause is given for the defendant's failure to appear when the conditional judgement was entered.

F. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13.BAIL. ARTICLE 6. ALABAMA BAIL REFORM ACT OF 1993. DIVISION 6. FORFEITURE -- PROCEEDINGS THEREON. § 15-13-136. Deals with the failure to issue and serve conditional forfeiture within 90 days.

11. In cases where the clerk of the court has failed to issue the conditional forfeiture notice and there has been no made within 90 days of the order of the court

12. and where the sureties have complied with Section 15-13-133,

13. then the sureties shall be discharged from all liability of the bail and the conditional judgment shall be set aside.

6. Remission

A. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13.BAIL. ARTICLE 6. ALABAMA BAIL REFORM ACT OF 1993. DIVISION 6. FORFEITURE -- PROCEEDINGS THEREON. § 15-13-139.Deals with remission after final judgment of forfeiture.

7. In cases where the sureties have paid the amount of the forfeiture to the

court or where the forfeiture has been made final (there is no further pending litigation on the forfeiture),

8. and the surety locates and causes the return of the defendant to the custody of the court where the bond was forfeited,

9. and if the defendant was substantially procured by actions of the surety,

10. and the administration of justice nor the successful prosecution of the defendant has not been thwarted,

11. then the court which ordered the forfeiture shall have power (within six months from the date of the final forfeiture judgment) to remit the whole of the forfeiture, or any portion thereof, which is in excess of the costs to the state.

7. Bail Agent's Arrest Authority

A. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 4. EFFECT OF UNDERTAKING AND DISCHARGE OF BAIL. §15-13-62. Establishes that sureties may arrest a defendant on a certified copy of the undertaking at any place in the state, or may authorize another person to arrest him by an endorsement in writing on such copy.

B. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 9. FUGITIVES FROM JUSTICE, EXTRADITION AND DETAINERS. ARTICLE 2. EXTRADITION. DIVISION 2. FROM ALABAMA. § 15-9-45. Deals specifically with arrest without warrant.

8. If a defendant is admitted to bail and fails to appear, the defendant may be recovered in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

8. Other Noteworthy Provisions

A. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 2. ENTRY AND RETURN. §15-13-22. Provides great detail and specificity on the qualifications for bail; bond required for bondsmen; qualification when sufficiency of bail doubtful.

B. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 4. EFFECT OF UNDERTAKING AND DISCHARGE OF BAIL. § 15-13-60. Deals with joint liability for parties involved with a defendant's appearance on the day fixed on the bond until discharged by law.

C. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 6. ALABAMA BAIL REFORM ACT OF 1993. DIVISION 1. GENERAL PROVISIONS. § 15-13-101. Sets forth definitions for appearance bonds, bondsman, surety companies and other relevant terms.

D. CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL. ARTICLE 6. ALABAMA BAIL REFORM ACT OF 1993. DIVISION 10. QUALIFICATION AND REGULATION. § 15-13-159.

Sets forth the qualifications for a professional surety company.

E. ALABAMA RULES OF CRIMINAL PROCEDURE. Rule 36.2. Provides examples of bail bond forms.

9. Noteworthy State Appellate Decisions

A. COASTAL BAIL BONDS, INC., and Bruce James v. James COPE. 2950207.

Court of Civil Appeals of Alabama. Nov. 22, 1996.

Rehearing Denied Jan. 10, 1997.

Certiorari Stricken Feb. 19, 1997

Alabama Supreme Court 1960807.

Plaintiff sued bail bond company and three individuals, alleging willful trespass, assault and battery, intentional infliction of emotional distress, negligence, and wantonness.

The Court of Civil Appeals, held that: the Bail bond company was not entitled to directed verdict in action for willful trespass, assault and battery, intentional infliction of emotional distress, negligence, and wantonness brought by person against whom force was used by bounty hunters in their pursuit of individual who had jumped bail.

The plaintiff presented sufficient evidence from which jury could reasonably determine that at least one bounty hunter was agent of bail bond company and that incident complained of was carried out within scope of bounty hunters' employment with bail bond company.

The record shows that one of Coastal Bail Bond's agents, Mark Ivey, had written a bond for Billy McLain. When McLain failed to make a court appearance, Ivey, James, and Herrin searched for him so that Coastal would not have to forfeit the bond. While searching for McLain during the early hours of March 19, 1992, James, Ivey, and Herrin went to Cope's house, and with guns drawn, broke down the door. The men yelled, "We've got you now,

Billy," and held Cope at gunpoint. Cope repeatedly told the men he was not McLain and that he did not know McLain. After a time, Cope was able to convince the men to let him show them his driver's license to prove he was not McLain. After seeing the driver's license, the three finally relented and left Cope's house. Cope immediately called the Sheriff's Department to report the incident. About an hour later, a sheriff's deputy arrested the three at a convenience store and removed several weapons from the men. The men told the deputy that they were working for Coastal and were searching for McLain, who had jumped bail. The three were prosecuted for reckless endangerment.

B. LIVINGSTON BAIL BONDS v. STATE of Alabama

Court of Civil Appeals of Alabama. June 3, 1981.

Rehearing Denied July 15, 1981.

Surety appealed judgments of the Circuit Court, Montgomery County, Perry O. Hooper, J., forfeiting bail bonds. The Court of Civil Appeals, Bradley, J., held that: (1) forfeitures of bail could not be predicated upon principal's failure to appear in district court, and (2) surety was discharged from liability on bonds where two criminal charges were not presented to or acted upon by subsequent session of grand jury or duly continued to subsequent grand jury by circuit court.

Reversed

The court held that forfeitures of bail entered by circuit court against surety could not be predicated upon principal's failure to appear in district court for preliminary hearing, where district court failed to certify forfeiture to circuit court. When a defendant fails to appear at the appointed time in the district court for a preliminary hearing, a default can be certified to the circuit court where proceedings can be had to forfeit bail. § 15-11-4, Code 1975. No such default was certified to the circuit court.

The court concludes that the forfeitures of bail entered by the circuit court against appellant could not be predicated upon Holmes's failure to appear in the district court for a preliminary hearing and, as a matter of fact, were not so predicated. Appellant argues that the failure to present the charges against Holmes at the March 1980 grand jury worked a discontinuance of its undertaking and it was, therefore, relieved of its obligations under the bonds. For this position appellant relies on *Rogers v. State*, 79 Ala. 59 (1885).

C. *Jones v. City of Opelika*, 242 Ala. 24, 4 So.2d 509 (Ala.1941).

An appeal may be made from a final judgment in proceeding for forfeiture of a bail bond.

D. *State v. Blake*, 642 So.2d 959 (Ala.1994).

A surety has the power to arrest a defendant to ensure the defendant's appearance at trial.

E. See "Case Notes" in the CODE OF ALABAMA TITLE 15. CRIMINAL PROCEDURE. CHAPTER 13. BAIL, for an excellent breakdown of numerous relevant case holdings.

9. Bounty Hunter Provisions

Bounty Hunters are termed "Professional Bondsmen" in Alabama's statutes. Rules governing such are given above under #2 for Licensing Requirements for Agents.