

---

## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

---

**Bill No:** AB 1347                      **Hearing Date:** June 15, 2021  
**Author:** Jones-Sawyer  
**Version:** June 2, 2021  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SC

**Subject:** *Bail: premiums*

### HISTORY

**Source:** California Department of Insurance

**Prior Legislation:** SB 318 (Hertzberg), died in Assm. Insurance Committee, 2019

**Support:** Alliance for Boys and Men of Color; American Civil Liberties Union of California; Anti-Recidivism Coalition; California District Attorneys Association; California Public Defenders Association; Californians for Safety and Justice; Community Legal Services of East Palo Alto; Consumer Attorneys of California; Ella Baker Center for Human Rights; Equal Justice Under the Law; Initiate Justice; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Public Counsel; San Francisco Public Defender; Western Center on Law and Poverty

**Opposition:** None known

**Assembly Floor Vote:** 77 - 0

### PURPOSE

***The purpose of this bill is to prohibit charging a renewal premium on a bail bond or immigration bond and provides civil penalties for a violation of this prohibition.***

*Existing law* prohibits excessive bail. (Cal. Const., art. I, sections 12 and 28(f)(3).)

*Existing law* provides that in setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations. A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. (Cal. Const., art. I, section 28(f)(3).)

*Existing law* states that the admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail. (Pen. Code, § 1268.)

*Existing law* authorizes the officer in charge of a jail or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, schedule of bail, or an order admitting to bail in cash or surety bond and to issue and sign an order for the release of the arrested person and to set a time and place for the appearance of the arrested person in court. (Pen. Code § 1269b, subd. (a).)

*Existing law* authorizes a court to release a person on bail in an amount that is more or less than the amount contained in the bail schedule, or release the person on OR after conducting a hearing in open court. If bail is set in an amount that is different from that contained in the bail schedule, the judge or magistrate shall state the reasons for that decision on the record. (Pen. Code § 1270.1.)

*Existing law* requires an automatic review, not more than five days from the original order fixing the bail amount, when a person is detained in custody on a criminal charge for want of bail. The defendant may waive this review. (Pen. Code § 1270.2.)

*Existing law* states that in setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. (Pen. Code § 1275, subd. (a).)

*Existing law* provides that in considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant. (*Ibid.*)

*Existing law* provides that an insurer shall not execute an undertaking of bail except by and through a person holding a bail license issued as provided in this chapter. A person shall not in this state solicit or negotiate in respect to execution or delivery of an undertaking of bail or bail bond by an insurer, or execute or deliver such an undertaking of bail or bail bond unless licensed as provided. (Ins. Code, §1800.)

*Existing law* defines “bail bond” to include any contract not executed by a surety insurer for or method of release of person arrested or confined on account of any actual or alleged violation of the provisions of any law of this or any other State or of any municipality in this State, including any release by means of cash or other property deposited in lieu of bail under the provisions of applicable Penal Code sections whereby the attendance in court when required by law and obedience to orders and judgment of any court by the person released is guaranteed. (Ins. Code, § 1800.4.)

*This bill* states that on and after January 1, 2022, no insurer, bail agent, or other bail licensee shall enter into a contract, agreement, or undertaking of bail that requires the payment of more than one premium for the duration of the agreement, and the duration of the agreement shall be until bail is exonerated.

*This bill* states that on and after January 1, 2022, no insurer, bail agent, or other bail licensee, shall charge, collect, or receive a renewal premium in connection with a contract, agreement, or undertaking of bail.

*This bill* states that on and after January 1, 2022, no insurer or insurance licensee shall enter into a contract, agreement, or undertaking to post an immigration bond that requires the payment of more than one premium for the duration of the agreement, and the duration of the agreement shall be until the bond is exonerated.

*This bill* states that on and after January 1, 2022, no insurer or insurance licensee shall charge, collect, or receive a renewal premium in connection with a contract, agreement, or undertaking to post an immigration bond.

*This bill* provides that a violation of the prohibitions in this bill by an insurer, insurance licensee, bail agent, or other bail licensee shall make the violator liable to the person affected by the violation for all damages that person may sustain by reason of the violation plus statutory damages in the sum of \$3,000.

*This bill* additionally provides that the affected person shall be entitled, if they prevail, to recover court costs and reasonable attorney's fees as determined by the court in any action brought to enforce this section.

*This bill* contains a severability clause so that if any provision of this act or its application is held invalid, the unaffected provisions or applications that can be given effect without the invalid provision or application may still be given effect.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Under the current cash bail system, accused people often lack sufficient financial resources to post bail. This system forces accused people and their families into entering bail bond contracts to avoid pretrial detention. According to [California Department of Insurance] CDI, bail agents typically charge a consumer 10% of the total bail amount as the bail bond fee. For example, on a \$25,000 bail, the 10% fee is \$2,500.

A 2017 UCLA study reported money bail disproportionately harms low-income people and communities of color. Black defendants are assigned higher average bail amounts than White defendants accused of similar offenses. Bail amounts assigned to Black men average 35% higher than those for White men, even when controlling for the seriousness of the offense.

“Renewal fees” are additional nonrefundable fees charged to defendants that have not had their cases resolved within 12 months. Renewal fees are unnecessary because bail agents and insurers are well secured against any losses. “Flight risk” of the defendant does not increase after 12 months; therefore, fees are unfair because they penalize defendants with lengthy court proceedings.

AB 1347 protects financially burdened defendants and their families against predatory “renewal fees” by making it a crime for bail agents to charge bail bond renewal fees. The

bill would also provide recourse for those forced to pay renewal fees by allowing them to collect damages for any violation.

## 2. Bail and Renewal Premiums

Existing law provides a process whereby the court may set a bail amount for a criminal defendant. (Penal Code Section 1269b.) Additionally, Section 12 of Article 1 of the California Constitution provides, with limited exceptions, that a criminal defendant has a right to bail and what conditions shall be taken into consideration in setting bail. A defendant may post bail by depositing cash or an equivalent form of currency, provide a security in real property, or undertake bail using a bail bond.

The bail bond is the most likely means by which a person posts bail and is essentially a private-party contract that provides the court with a guarantee that the defendant will appear for a hearing or trial. A defendant pays a licensed bail agent a percentage of the total amount of bail ordered as a non-refundable fee – often an amount in the range of 10%. The bail agent will contract with a surety company to issue a bail bond – essentially, an insurance policy – by paying the surety company a portion of the premium received. The bond is issued providing that if the defendant fails to appear, the county will receive the full amount of bail set by the court. The bond is provided to the court and, if accepted, the defendant is released.

It is estimated that the commercial bail bond industry writes about \$14 billion in bonds each year and takes profits of \$2 billion annually. (*The Devil in the Details: Bail Bond Contracts in California*, UCLA School of Law (May 2017), p. 3.) The percentage of money bail used for pretrial release has increased from 23% in 1990 to 49% in 2009. (*Ibid.*) As of the spring of 2018, there were approximately 3,200 licensed bail agents and organizations in California. (Mel Gonzalez, *Consumer Protection for Criminal Defendants: Regulating Commercial Bail in California* (2018) 106 Calif. L. Rev. 1379, 1391.) This industry has grown exponentially over the past two decades, coinciding with increases in average bail amounts. From 2002 to 2012, the average bail amount for the most frequently committed felony offenses increased by 22% in California, and bail is a required condition of release in 70% of felony cases nationwide. (*Id.* at p.1394.)

A renewal premium may be charged in bail contracts at the discretion of individual bail agents or bail bond companies. (California Department Insurance web site <http://www.insurance.ca.gov/01-consumers/170-bail-bonds/> [as of June 3, 2021].) These renewal premiums are typically charged if a case is still pending after one year of the bail bond being issued, which is not unusual for felony cases and cases where a defendant has waived their right to a speedy trial.

This bill prohibits the charging of a renewal premium on a bail bond or immigration bond. An immigration bond operates similarly to a bail bond in that a detainee may be granted release on an immigration bond which may be paid by either a cash bond in the full amount of the bond or a surety bond procured by paying a non-refundable premium to a private company. This bill provides that a violation of this prohibition makes the violator liable to the person affected by the violation for all damages that person may sustain by reason of the violation plus statutory damages in the sum of \$3,000. The bill also provides that the affected person affected shall be entitled, if they prevail, to recover court costs and reasonable attorney's fees as determined by the court in any action brought to enforce this section.

### 3. Contracts Clause

The U.S. Constitution provides that no state shall pass any law impairing the obligation of contracts (U.S. Const. art. 1, § 10.), and the California Constitution specifies that a law impairing the obligation of contracts may not be passed. (Cal. Const. art. 1, § 9.) Courts have not interpreted the Contracts Clause as imposing an absolute bar to the enactment of legislation that interferes with contracts. (*Home Building & Loan Association v. Blaisdel* (1934) 290 U.S. 398, 428). Instead, courts examine “whether the state law is drawn in an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant and legitimate public purpose.’” (*Sveen v. Melin* (2018) 138 S. Ct. 1815, 1822 (internal citations omitted).)

This bill impacts existing bail agreements in that it contains provisions that prohibit the charging, collection, or receipt of a renewal premium on a bail bond or immigration bond starting January 1, 2022. If these provisions are challenged on the basis that they interfere with an existing contractual obligation, these provisions may still be upheld if the court finds that the interference serves a significant and legitimate public purpose and is reasonably related to achieving that goal. However, if these provisions are struck down, the remaining unaffected provisions of the bill will still go into effect due to the bill’s severability clause.

### 4. Argument in Support

According to California Insurance Commissioner Ricardo Lara, the sponsor of this bill:

Bail agents typically charge a consumer 10% of the total bail amount and immigration bond agents typically charge 10-20% of the total bail amount or 2-5% if the person can pay fully in collateral. These charges are nonrefundable fees. For example, on a \$25,000 bail, the 10% fee is \$2,500. Both types of agents may additionally require the bond to be secured through collateral such as a lien on a defendant’s house. But some bail bond and immigration bond companies also charge an additional non-refundable “renewal fee” when a defendant’s case has not been resolved within 12 months.

Charging an additional nonrefundable fee after 12 months is an arbitrary practice used by the bail bond and immigration bond industries to make additional profits off unsuspecting and vulnerable consumers. To make matters worse, hearing timelines and postponements have only increased during the pandemic as courts attempt to balance backlogs and safety concerns. A recent CalMatters report found that at least 1,300 unsentenced people have been locked in county jails for longer than three years awaiting a trial or sentencing. Further, current immigration court backlog data shows there are over 192,000 pending cases with an average timeline of 1,042 days they’ve remained unresolved.

These extended hearing timelines have led to more individuals having to pay these insidious renewal fees. Renewal fees are unnecessary because agents and insurers are well secured against any losses and “flight risk” of the defendant does not increase after 12 months. These fees are also unfair because they penalize defendants with lengthy court proceedings.

AB 1347 would help curb predatory business practices in the bail bond and immigration bond industries which threaten the financial stability of families who

often are already struggling by making it illegal for bail agents and immigration bond agents to charge renewal fees to consumers and would provide harmed consumers with the ability to collect damages for any violation.

**-- END --**