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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** SB 262                      **Hearing Date:** March 23, 2021  
**Author:** Hertzberg  
**Version:** March 10, 2021  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Bail*

### HISTORY

**Source:** Anti-Recidivism Coalition  
Californians for Safety and Justice  
Western Center on Law and Poverty

**Prior Legislation:** SB 10 (Hertzberg), Ch. 244, Stats. 2018  
AB 3125 (Mayes), died on inactive file, 2018  
AB 2388 (Hagman), held in Asm. Approps. suspense file, 2014  
AB 1118 (Hagman), failed passage in Sen. Pub. Safety, 2013  
AB 1264 (Hagman), never heard in committee, 2011

**Support:** California Department of Insurance; California Innocence Project; California Labor Federation, AFL-CIO; California Public Defenders Association; City of Alameda; Conference of California Bar Associations; Essie Justice Group; Friends Committee on Legislation of California; Initiate Justice; League of Women Voters; Rubicon Programs; San Francisco Public Defender; SEIU California; Smart Justice California

**Opposition:** American Bail Coalition; Bail Hotline Bail Bonds; California Attorneys for Criminal Justice (oppose unless amended); California Peace Officers Association; California Police Chiefs Association; California State Sheriffs' Association; Crime Survivors Resource Center; Golden State Bail Agents Association, Inc.; Peace Officers Research Association of California

### PURPOSE

*The purpose of this bill is to require zero dollar bail for all misdemeanor and felony offenses, except as specified, and to require Judicial Council to prepare, adopt, and annually revise a bail schedule for the exempt offenses.*

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

*Existing law* declares that a person shall be released on bail by sufficient sureties, except for:

- Capital crimes when the facts are evident or the presumption great;

- Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
- Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

(Cal. Const., art. I, section 12.)

*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* states that it is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council. (Pen. Code § 1269b, subd. (c).)

*Existing law* requires the countywide bail schedule to contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council. (Pen. Code § 1269b, subd. (f).)

*Existing law* authorizes a court to release a person who has been arrested for, or charged with any offense other than a capital offense, on his or her own recognizance. (Pen. Code § 1270.)

*Existing law* requires a person arrested for a misdemeanor to be released on his or own recognizance (OR) unless the court makes a finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the

defendant as required, an OR release will compromise public safety or will not reasonably ensure the appearance of the defendant. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set monetary bail and specify the conditions, if any, under which the defendant shall be released. (*Id.*)

*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.*)

*This bill* requires bail to be set at \$0 for all misdemeanors and felonies except the following offenses:

- A “serious felony” or a “violent felony” as defined in existing law;
- Attempts to deter or prevent an executive officer from performing their duties or knowingly resisting an officer in the performance of their duties;
- Contempt of court for violation of a protective order;
- Preventing or dissuading a victim or witness from testifying in court through force or threat of force;
- Spousal rape;
- Domestic violence offenses;
- A violation of a protective order if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;
- Felony criminal threats;

- Stalking;
- An offense which requires registration on the sex offender registry;
- Driving under the influence (DUI) offenses;
- Felony looting; and,
- Being in possession of firearm when prohibited due to a felony conviction.

*Existing law* states that it is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide bail schedule for all bailable felony, misdemeanor, and infraction offenses except Vehicle Code infractions. (Pen. Code, §1269b, subd. (c).)

*Existing law* provides that in adopting a uniform countywide schedule of bail for all bailable offenses, the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhanced factor charged in the complaint, as specified. (Pen. Code, § 1269b, subd. (e).)

*This bill* repeals the requirement that superior court judges prepare, adopt and annually revise a countywide bail schedule and instead requires the Judicial Council to prepare, adopt, and annually revise a statewide bail schedule for the exempt offenses listed above.

*This bill* requires Judicial Council to send a copy of the statewide bail schedule to the presiding judge of each superior court, and the presiding judge shall send a copy to the officer in charge of the county jail, to the officer in charge of each city jail within the county, and to each superior court judge and commissioner in the county.

*This bill* prohibits the costs relating to conditions of release on bail from being imposed on persons released on bail or on OR.

*This bill* requires the sheriff, police, and court employees to approve and accept bail in the amount fixed by the bail schedule.

*This bill* requires the court to order a return of the money or property paid to a bail bond licensee by or on behalf of the arrestee to obtain bail under any of the following circumstances:

- An action or proceeding against the arrestee who has been admitted to bail is dismissed;
- No charges are filed against the arrestee within 60 days of arrest; or,
- The arrestee has made all court appearance during the pendency of the action or proceeding against the arrestee.

*This bill* authorizes the bail bond licensee to retain a surcharge not to exceed 5 percent of the amount paid by the arrestee or on behalf of the arrestee.

*This bill* states that money or property shall be returned within 30 days of the court's order and shall be to the entity who paid the money or property to the bail bond licensee to obtain bail.

*The bill* requires the court to order the return of money or property for a bail contract entered into on or after January 1, 2022.

*This bill* states the intent of the Legislature to enact further changes to current law to ensure that a defendant is not detained pending trial simply due to an inability to pay for the amount of bail in the statewide bail schedule.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

In California’s criminal justice system, people who are arrested and cannot afford to post bail have two options: pay a non-refundable fee to a bail agent to post bail on their behalf, or languish in jail for an indefinite period before their trial. On any given day in California, 63% or roughly 46,000 people in the state’s jails are awaiting trial or sentencing, and 97% of those who make bail use a bail agent to secure their release. This means that thousands of Californians accused of crimes end up paying a fee to stay out of jail, before ever being found guilty by a judge or jury.

Bail companies have built an immensely profitable industry through this venture, collecting high fees – usually 10% of the full bail amount – while rarely forfeiting bonds posted to the court. Conversely, for the accused, securing a bail bond through an agent is far from simple. People often have to borrow from friends and family, enter into exploitative financing schemes, or put up their property – even their homes – as collateral. Regardless of whether a case is dismissed, or charges are not ultimately filed after an arrest, the bail company keeps its premium. Despite this plain inequity, the only alternative is worse: being stuck in jail could mean losing a job, missing rent payments, losing custody of a child or ultimately pleading guilty when innocent just to get home and prevent these harms.

The current pretrial framework, including the process of bail, presents staggering costs not only for people accused and their families, but for local governments, which pay an average of \$100 per day to hold someone in jail pending trial. By comparison, the Pretrial Justice Institute reports that the cost of supervising a person in the community is about 10% of the cost of keeping them in jail. These costs – both human and financial – are unjustifiable.

### 2. Judicial Council’s Emergency Order

On April 6, 2020, the Judicial Council adopted emergency rules due to the COVID-19 pandemic. The rules included an emergency bail schedule which established zero dollar bail for most misdemeanor and felony offenses. The offenses exempted from zero dollar bail under the emergency rules are the same offenses exempted in this bill:

- A “serious felony” or a “violent felony” as defined in existing law;

- Attempts to deter or prevent an executive officer from performing their duties or knowingly resisting an officer in the performance of their duties;
- Contempt of court for violation of a protective order;
- Preventing or dissuading a victim or witness from testifying in court through force or threat of force;
- Spousal rape;
- Domestic violence offenses;
- A violation of a protective order if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;
- Felony criminal threats;
- Stalking;
- An offense which requires registration on the sex offender registry;
- Driving under the influence (DUI) offenses;
- Felony looting; and,
- Being in possession of firearm when prohibited due to a felony conviction.

(See <<https://www.courts.ca.gov/documents/2020-04-06-rules-effective-04-06-2020.pdf>> [as of Mar. 8, 2021].)

The order specifies that nothing in the Emergency Bail Schedule restricts the ability of courts to deny bail as authorized by article I, section 12, or 28 of the California Constitution and that each superior court retains the authority to reduce the amount of bail for any of the offenses exempted from zero dollar bail or any other offenses not in conflict with the Emergency Bail Schedule.

The order was to remain in effect until 90 days after the governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or the order is amended or repealed by Judicial Council. On June 20, 2020, Judicial Council repealed their emergency bail schedule but many counties continued to keep implementing the zero dollar bail schedule. (See <<https://newsroom.courts.ca.gov/news/california-counties-keeping-covid-19-emergency-bail-schedules>> [as of Mar. 10, 2021].)

This bill codifies Judicial Council's emergency bail schedule requiring \$0 dollar bail for most misdemeanors and felony offenses and contains the same exempted offenses. This bill requires Judicial Council to create a statewide bail schedule for those exempted offenses. Although not referenced in the bill's provisions, the California constitutional provisions authorizing pretrial detention for public safety reasons would continue to apply.

### 3. Background: Bail

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. 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. As designed, the bail system often allows the court to rely on the private sector to ensure appearances and provide a means for the county to be made whole in the event that a person fails to appear.

While the main purpose of a bail bond is to provide some assurance that a defendant will return to court to resolve the pending charges, courts also consider the danger a released defendant will pose to the public or specific persons. Bail is set through a bail schedule that lists preset amounts of bail for various crimes. A committee of judges in each county promulgates the bail schedule for that county. (Pen. Code § 1269b, subd. (c).) A defendant or the prosecution can move the judge presiding over a particular case to raise or lower the amount of bail, or the defendant can request release on his or her own recognizance. (Pen. Code § 1275.) Additional statutory rules apply if the defendant is charged with a serious felony or domestic violence. (Pen. Code § 1270.1.)

The existing bail system has come under scrutiny because of claims that it does not promote public safety and it unfairly penalizes defendants who are poor while allowing defendants who have means to buy their way out of jail. The Chief Justice of the California Supreme Court set up a working group to study pretrial detention practices and provide recommendations for reform. The study found that California’s “pretrial and release detention system unnecessarily compromises victim and public safety because it bases a person’s liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias.” (Judicial Council of Cal., Pretrial Detention Reform: Recommendations to the Chief Justice (2017), p. 1.) The working group recommended several reforms including implementing a robust risk-based pretrial assessment and supervision to replace the monetary bail system. (*Id.* at p. 2.)

The Legislature passed legislation that would have implemented major changes to the bail system by replacing cash bail with pretrial risk assessments and non-monetary conditions of release (SB 10, Chapter 244, Statutes of 2018), however a veto referendum on the law was placed on the November 2020 ballot and the law was repealed. (Proposition 25, failed passage by California voters, Gen. Elec. (Nov. 3, 2020).) When a referendum fails, the Legislature is limited in enacting the same or “essentially similar” legislation. (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638.) Thus, if a challenge is made against any bills related to bail on the grounds that the Legislature is violating the peoples referendum powers, there must be a showing that the new

legislation is “substantially different” than the rejected law. (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 578.)

#### 4. Pending Litigation: In re Humphrey

*In re Humphrey* is currently pending a ruling by the California Supreme Court. The facts of the case involved Kenneth Humphrey, a 63 year old man, who followed another man into his apartment and asked for money. Humphrey threatened to put a pillow case over the victim’s head and broke the victim’s cellphone by throwing it on the ground. After the victim gave Humphrey \$2, he also stole \$5 and a bottle of cologne and left the apartment. Humphrey was later arrested and charged with robbery. (*In re Humphrey* (2018) 19 Cal App 5th 1006, 1016-1017.)

At his arraignment, Humphrey requested to be released on his own recognizance due to his advanced age, his community ties as a lifelong resident of San Francisco and his unemployment and financial condition, as well as the minimal property loss of the crime, the absence of a criminal record for more than 14 years, and his never previously having failed to appear at a court ordered proceeding. (*Id.* at p. 1017.) The prosecutor asked the court to follow the risk assessment report’s recommendation to not release the defendant and asked for bail in the amount of \$600,000 which is prescribed by the bail schedule. (*Ibid.*) The court set bail at \$600,000. (*Id.* at p. 1018.)

Humphrey subsequently filed a motion for a bail hearing asking to be released on his own recognizance or for a bail reduction stating that the bail set was unreasonable and beyond the defendant’s means and violates the Eighth Amendment’s proscription against excessive bail. (*Ibid.*) At the hearing, defense counsel asked the court to release Humphrey on his own recognizance into a residential substance abuse program for seniors that had agreed to accept him. (*Id.* at p. 1020.) The trial court stated that it had public safety concerns because of the seriousness of the crime and Humphrey’s prior crimes were similar to the new offense. The court found that Humphrey’s strong ties to community would justify a deviation from the bail schedule but that high bail was still warranted. The court modified bail to \$350,000 and added a condition of release for Humphrey to participate in the residential program if he is able to make bail. However, because Humphrey could not make bail, he had to remain in custody pending trial. (*Id.* at p. 1021.)

Humphrey filed a writ of habeas corpus claiming that he was denied due process of law and deprived of his personal liberty on the basis of poverty which arises under the due process and equal protection clauses. The Court of Appeal found that the trial court erred in failing to inquire into Humphrey’s financial circumstances and less restrictive alternatives to money bail. (*Id.* at p. 1016.) “The[ trial] court’s error in failing to consider those factors eliminated the requisite connection between the amount of bail fixed and the dual purposes of bail, assuring the petitioner’s appearance and protecting public safety. . . . Due to its failure to make these inquiries, the trial court did not know whether the \$350,000 obligation it imposed would serve the legitimate purposes of bail or impermissibly punish petitioner for his poverty.” (*Id.* at pp. 1030-1031.) The Court further provided that “[b]ail schedules provide standardized money bail amounts based on the offense charged and prior offenses, regardless of other characteristics of an individual defendant that bear on the risk he or she currently presents. These schedules, therefore, represent the antithesis of the individualized inquiry required before a court can order pretrial detention. Bail schedules have been criticized as undermining the judicial discretion necessary for individualized bail determinations, as based on inaccurate assumptions that



defendants charged with more serious offenses are more likely to flee and reoffend, and as enabling the detention of poor defendants and release of wealthier ones who may pose greater risks. (*Id.* at pp. 1042-1043.)

The California Supreme Court has granted review and heard oral arguments on the matter on January 5, 2021. (Review granted May 23, 2018, S247278.) After granting review, the California Supreme Court ordered the portion of the Court of Appeal's decision requiring individualized bail determinations and the consideration of a defendant's financial circumstances in setting conditions of release to hold legal precedence.

This bill states legislative intent to enact further changes to the law to ensure that a defendant is not detained pending trial simply due to an inability to pay for the amount of bail in the statewide schedule. A ruling in the *Humphrey* case is expected by early April.

## 5. Early Data on Zero Dollar Bail

After Judicial Council adopted the emergency bail schedule implementing zero dollar bail for many offenses, law enforcement officials criticized the plan as harmful to public safety and claiming that many of those released on \$0 bail were rearrested for new crimes and then re-released. While it is too early to determine what the impact has been, some early numbers from Bay Area cities seem to indicate that re-arrests were actually low. A news article listed the following numbers after receiving data through a Public Records Request on rearrests about two months into adopting the emergency schedule:

- Alameda County: A total of 546 inmates were released on zero bail as of May 18; 31 of those had been arrested at a rate of 5.6%, according to data provided by the sheriff's records department.
- San Francisco: A total of 269 inmates were allowed to remain out of custody on zero bail from April 13 to May 29, according to data provided by the sheriff's office. Of those, 33 people were re-arrested at a re-arrest rate of 12%.
- Contra Costa County: Released 151 people on zero bail from April 1 to May 1. The department has not tallied the number of inmates who have been re-arrested.
- San Mateo County: A total of 96 people received zero bail and three have been re-arrested in that county through April 30, for a re-arrest rate of 3%.
- Santa Clara County: A total of 449 people were released on zero bail and 42 of them were re-arrested through May 28 at a rate of 9%.

(*Despite California Sheriffs' that 'zero dollar bail is a failure' data isn't so clear*, KTVU (May 29, 2020.)

## 6. Refund of Bail

Under the current cash bail system, 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 because the bail

amount is often too high to post in its entirety. This 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. 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.

This bill requires the court to order a return of money or property paid to a bail bond licensee or on behalf of the arrestee to obtain bail if any of the following occurs: (1) an action or proceeding against the arrestee who has been admitted to bail is dismissed; (2) no charges are filed against the arrestee within 60 days of arrest; or (3) the arrestee has made all court appearances during the pendency of the action or proceeding against the arrestee. The money or property shall be returned within 30 days of the court's order to return the money or property and shall be returned to the entity or person who paid the money or property to the bail bond licensee to obtain bail. The bail bond licensee is entitled to retain a surcharge not to exceed 5 percent of the amount paid by the arrestee or on behalf of the arrestee. These provisions are to be applied to bail contracts entered into on or after January 1, 2022.

According to opponents of the bill, under the existing system bail agents make sure that arrestees make it to all court appearances, however if a refund is required they will be disincentivized from doing so.

## **7. Argument in Support**

According to Western Center on Law and Poverty, a co-sponsor of this bill:

In California, 97% of people who make bail use a bail agent and pay a non-refundable fee for their freedom. For most, this is not a simple transaction. People often have to borrow from friends and family, enter into exploitative financing schemes, or put up their property – even their homes – as collateral. Regardless of whether a case is dismissed, or charges are not ultimately filed after an arrest, the bail company keeps its premium. Despite this plain inequity, the only alternative is worse: being stuck in jail could mean losing a job, missing rent payments, losing custody of a child or ultimately pleading guilty when innocent just to get home and prevent these harms.

This alternative is a reality for too many Californians. According to the Public Policy Institute of California, on any given day, 63% or roughly 46,000 people in California jails are awaiting trial or sentencing. This presents staggering costs not only for people accused and their families, but for local governments, which pay an average of \$100 per day to hold someone pending trial. The Pretrial Justice Institute reports that the cost of supervising a person in the community while pending trial is about 10% of the cost of keeping them in jail. With data showing that the vast majority of people released pretrial do not reoffend, and that very little is needed to ensure they show up to court on time, these costs – both human and financial – are unjustifiable.

## 8. Arguments in Opposition

According to Golden State Bail Agents Association, Inc.:

In 1982 the California Supreme Court addressed voters' referendum power:

“Since its inception, the right of the people to express their collective will through the power of the referendum has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure. [Citations]. Unless the new measure is ‘essentially different’ from the rejected provision and is enacted ‘**not in bad faith, and not with intent to evade the effect of the referendum petition,**’ it is invalid. [Citations].” (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 678, emphasis added).

These bills require a mandatory state bail schedule that sets bail at zero for all but a few charges. Even for those not set at zero bail amounts, the bail agent must refund all but 5% of the bail bond premium if the case against the arrestee has been dismissed, the prosecutor fails to file charges within 60 days of arrest or the arrestee attends all court appearances.

Bail agents are exposed to the full risk of forfeiture the moment the arrestee is bailed out of jail because the arrestee could flee. A bail agent that posts a \$50,000 bail bond is liable to pay \$50,000 to the court if the arrestee fails to attend all of his or her required court dates. This is why under current law, the bail agents' premium is fully earned upon release of the arrestee. Obviously, no bail agent will post bail for free, at zero bail, be exposed to the risk of forfeiture and be unable to pay employees and other overhead expenses.

As for the few cases where a bail amount will be set, bail agents have no control over when prosecutors file or dismiss cases, and requiring the refund of 95% of the bail premium when arrestees attend all their court dates creates a perverse incentive. Under current law, bail agents are incentivized to make sure arrestees attend all of their court dates. SB 262 would disincentivize bail agents to help arrestees attend court.

It is clear from the above that SB 262 is invalid because it has been introduced in bad faith in an attempt to evade the referendum result by destroying the business model of bail agents.

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