

BILL ANALYSIS

Senate Research Center

S.B. 1336
By: Hinojosa
Criminal Justice
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Enrolled

DIGEST AND PURPOSE

Sureties are subject to forfeiture of the full face amount of the posted bond when a defendant fails to appear. Most jurisdictions will give bail agents some opportunity to attempt to find a defendant and return the defendant to court. However, current practices vary widely from county to county. S.B. 1336 provides for the exoneration of a criminal defendant and the defendant's sureties on a personal bond or bail bond for certain causes. This bill also provides for certain procedures in connection with bond forfeiture.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 22.13, Code of Criminal Procedure, as follows:

- (a) Provides certain additional causes which will exonerate a defendant and his sureties, if any, from liability upon the forfeiture taken.
- (b) Provides that a surety exonerated under Subdivision 5, Subsection (a), remains obligated to pay costs of court, any reasonable and necessary costs incurred by a county to secure the return of the principal, and interest accrued on the bond amount from the date of the judgment nisi to the date of the principal's incarceration.

SECTION 2. Amends Article 22.16, Code of Criminal Procedure, as follows:

- (a) Requires the court, after forfeiture of a bond and before entry of a final judgment, on written motion to remit to the surety the amount of the bond, after deducting certain costs.
- (b) Creates this subsection from existing text from former Subsection (d). Deletes language regarding a surety's request for confirmation of the incarceration of his principal and notification requirements of a law enforcement agency. Deletes former Subsection (c) regarding the entering of a final judgment against a bond.
- (c) Redesignated from former Subsection (e).

SECTION 3. Amends Article 44.04(a), Code of Criminal Procedure, to delete language regarding a defendant charged with a misdemeanor who is on bail.

SECTION 4. Amends Subsections (b) through (e), Article 17.19, Code of Criminal Procedure to include the term "capias" along with a warrant of arrest.

SECTION 5. Amends Article 23.05, Code of Criminal Procedure, as follows:

- Art. 23.05. New heading: CAPIAS AFTER SURRENDER OR FORFEITURE. (a) Requires a capias to be immediately issued for the arrest of the defendant, if a forfeiture of bail is declared or a surety surrenders a defendant under Article 17.19.

(b) Authorizes a capias issued under this article to be executed by a peace officer or by a private investigator licensed under Chapter 1702, Occupations Code.

(c) Requires a capias under this article to be issued not later than the 10th business day after the date of the court's issuance of the order of forfeiture or order permitting surrender of the bond.

(d) Requires the sheriff of each county to enter a capias issued under this article into a local warrant system not later than the 10th business day after the date of issuance of the capias by the clerk of court.

SECTION 6. Amends Section 1704.001, Occupations Code, by amending Subdivision (4) and adding Subdivision (4-a), as follows:

(4) Redefines "bonding business."

(4-a) Defines "final judgment."

SECTION 7. Amends Section 1704.053, Occupations Code, as follows:

Sec. 1704.053. BOARD COMPOSITION. Provides that a board consists of a certain group of individuals.

SECTION 8. Amends Subchapter B, Chapter 1704, Occupations Code, by adding Section 1704.0535, as follows:

Sec. 1704.0535. ELECTION OF BAIL BOND SURETY BOARD MEMBER. (a) Requires the board to annually conduct a secret ballot election to elect the member of the board who serves as the representative of licensed bail bond sureties by electing a licensed bail bond surety or agent for a corporate surety board member.

(b) Provides that each individual licensed in the county as a bail bond surety or agent for a corporate surety is entitled to cast one vote for each license held.

SECTION 9. Amends Section 1704.054, Occupations Code, by adding Subsection (c) to authorize the presiding officer to vote on any board matter.

SECTION 10. Amends Section 1704.105, Occupations Code, as follows:

Sec. 1704.105. LICENSED BAIL BOND SURETY LIST. (a) Requires a board to post in each court having criminal jurisdiction in the county, and provide to each local official responsible for the detention of prisoners in the county, a current list of each licensed bail bond surety and each licensed agent of a corporate, rather than the bail bond, surety in the county.

(b) Requires, rather than authorizes, a list of each licensed bail bond surety and each licensed agent of a corporate surety in a county to be displayed at each location where prisoners are examined, processed, or confined.

SECTION 11. Amends Section 1704.108, Occupations Code, as follows:

Sec. 1704.108. NOTIFICATION OF DEFAULT BY CORPORATION. Requires a board to promptly notify the Texas Department of Insurance if a corporation fails to pay a judgment of forfeiture as provided by Section 1704.204(a), rather than on a financial obligation undertaken by the corporation in the county.

SECTION 12. Amends Section 1704.109, Occupations Code, as follows:

Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. (a) Creates this subsection

from existing text to authorize a board by rule to regulate solicitations or advertisements by or on behalf of bail bond sureties, rather than license holders, to protect the public from certain actions including threats to public safety or the safety of law enforcement officers.

(b) Prohibits a bail bond surety, an agent of a corporate surety, or an employee of the surety or agent to make, cause to be made, or benefit from certain unsolicited contact.

(c) Provides that this section does not apply to a solicitation or unsolicited contact related to a Class C misdemeanor.

SECTION 13. Amends Section 1704.151, Occupations Code, as follows:

Sec. 1704.151. LICENSE REQUIRED. Prohibits a person from acting as a bail bond surety or as an agent for a corporate surety in the county unless the person holds a license issued under this chapter, except as provided by Section 1704.163.

SECTION 14. Amends Section 1704.152(a), Occupations Code, to require an individual, including an agent designated by a corporation in an application, to meet certain requirements.

SECTION 15. Amends Sections 1704.154(b) and (d), Occupations Code, as follows:

(b) Requires the application to meet certain requirements.

(d) Provides that, until payment of the final judgment, an unpaid final judgment disclosed under Subsection (b)(4)(G)(ii) or (b)(4)(H) bars, rather than may not bar, licensure for the applicant unless the applicant has deposited with the court cash or a supersedeas bond in the amount of the final judgment pending:

- (1) a ruling on a timely filed motion for a new trial; or
- (2) an appeal.

SECTION 16. Amends Section 1704.155, Occupations Code, as follows:

Sec. 1704.155. REAL PROPERTY LIST. Requires a list of nonexempt real property required under Section 1704.154(b)(3) to, for each parcel listed, include certain information.

SECTION 17. Amends Section 1704.159(a), Occupations Code, to require the board, after the hearing under Section 1704.158, to enter an order conditionally approving the application unless, rather than if, the board determines that a ground exists, rather than does not exist, to deny the application.

SECTION 18. Amends Sections 1704.160(b) and (c), Occupations Code, as follows:

(b) Requires a corporation to make a separate deposit for each license granted to it in a county.

(c) Requires, at the option of the applicant, the property executed in trust under Subsection (a)(1)(B) to be valued in the amount indicated by:

- (1) an appraisal by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or
- (2) the county's most recent certified tax appraisal roll.

SECTION 19. Amends Section 1704.162, Occupations Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) Requires, rather than authorizes, a board to approve an application for renewal under certain circumstances.

(g) Authorizes the board to disapprove an application only by entering an order.

SECTION 20. Amends Section 1704.202(d), Occupations Code, to require the records required under this section be:

- (1) made available for inspection and copying at the board's expense on demand by the board or an authorized representative of the board;
- (2) maintained at the license holder's office location in the county; and
- (3) maintained for not less than four years after the conclusion of the case for which the bond was given.

SECTION 21. Amends Section 1704.204(a), Occupations Code, as follows:

(a) Requires a person, rather than a license holder, to pay a final judgment on a forfeiture of a bail bond executed by the person not later than the 31st, rather than the 30th, day after the date of the final judgment unless a timely motion for a new trial has been filed. Requires the person, if a timely motion for a new trial or a notice of appeal has been filed, to pay the judgment not later than the 31st day after the date the motion is overruled, if the motion is overruled or deposit with the court cash or a supersedeas bond in the amount of the final judgment, if an appeal is filed.

SECTION 22. Amends Section 1704.207(a), Occupations Code, as follows:

(a) Authorizes, rather than prohibits, a person executing a bail bond to surrender the principal for whom the bond is executed by under certain circumstances.

SECTION 23. Amends Subchapter F, Chapter 1704, Occupations Code, by adding Section 1704.2535, as follows:

Sec. 1704.2535. FAILURE TO PAY FINAL JUDGMENT BY BAIL BOND SURETY.

(a) Requires the board or its authorized representative to immediately notify the sheriff if a bail bond surety fails to pay a final judgment of forfeiture as provided by Section 1704.204(a).

(b) Prohibits the sheriff, after receiving notification, from accepting any bonds from the bail bond surety until the surety pays the judgment.

(c) Provides that the bail bond surety's privilege to post bonds is reinstated when the bail bond surety pays the judgment.

(d) Provides that a board is not required to provide notice or a hearing before making the notification required by this section.

SECTION 24. Amends Section 1704.254(a), Occupations Code, to require notice of a hearing to suspend or revoke a license under this chapter to:

- (1) be sent by certified mail to the last known address of the license holder not later than the 11th day before the date of the hearing;
- (2) state each alleged violation of this chapter; and
- (3) include a copy of any written complaint on which the hearing will be based.

SECTION 25. Amends Section 1704.255, Occupations Code, by adding Subsection (c) to prohibit the board from asserting a reason on appeal for an action by the board that differs from the reasons specified in the board's notice of hearing under Section 1704.254.

SECTION 26. Amends Section 1704.301, Occupations Code, as follows:

Sec. 1704.301. New heading: RETURN OF SECURITY. Prohibits a bail bond surety, rather than a license holder, from holding security for the payment of a bail bond fee or assuring the principal's appearance in court for more than 30 days after the date on which the owner of the security:

- (1) requests return of the security in writing; and
- (2) submits to the bail bond surety written evidence of the conclusion of:
 - (A) the payment agreement; or
 - (B) all of the criminal cases for which the security was given.

SECTION 27. Provides that Section 1704.303(b), Occupations Code, as amended by Chapters 1262 and 1461, 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(b) Provides that a person may not advertise as a bail bond surety in a county unless the person holds a license issued under this chapter by a bail bond board in that county. Provides that a person does not violate this subsection if the person places an advertisement that appears in more than one county and:

- (1) the advertisement clearly indicates the county or counties in which the person holds a license issued under this chapter; and
- (2) any local telephone number in the advertisement is a local number only for a county in which the person holds a license issued under this chapter.

SECTION 28. Repealer: Subsection (c), Section 1704.202, Occupations Code.

SECTION 29. Provides that the changes in law made by this Act regarding the composition or election of a county bail bond board do not affect the entitlement of a member serving on a board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Provides that those changes in law apply only to a member appointed or elected on or after September 1, 2003.

SECTION 30. (a) Makes application of this Act prospective for Sections 1704.159, 1704.160, and 1704.162, Occupations Code.

(b) Makes application of this Act prospective for Section 1704.254, Occupations Code.

(c) Makes application of this Act prospective for Section 1704.255, Occupations Code.

SECTION 31. Makes application of this Act prospective for Section 1704.303, Occupations Code.

SECTION 32. Makes application of this Act prospective in relation to bail bonds.

SECTION 33. Effective date: upon passage or September 1, 2003.