

By: Hinojosa

S.B. No. 1336

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the liability of a criminal defendant and the
3 defendant's sureties on a personal bond or bail bond and to certain
4 procedures in connection with bond forfeiture.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 22.13, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 22.13. CAUSES WHICH WILL EXONERATE. (a) The
9 following causes, and no other, will exonerate the defendant and
10 his sureties, if any, from liability upon the forfeiture taken:

11 1. That the bond is, for any cause, not a valid and
12 binding undertaking in law. If it be valid and binding as to the
13 principal, and one or more of his sureties, if any, they shall not
14 be exonerated from liability because of its being invalid and not
15 binding as to another surety or sureties, if any. If it be invalid
16 and not binding as to the principal, each of the sureties, if any,
17 shall be exonerated from liability. If it be valid and binding as
18 to the principal, but not so as to the sureties, if any, the
19 principal shall not be exonerated, but the sureties, if any, shall
20 be.

21 2. The death of the principal before the forfeiture
22 was taken.

23 3. The sickness of the principal or some
24 uncontrollable circumstance which prevented his appearance at

1 court, and it must, in every such case, be shown that his failure to
2 appear arose from no fault on his part. The causes mentioned in
3 this subdivision shall not be deemed sufficient to exonerate the
4 principal and his sureties, if any, unless such principal appear
5 before final judgment on the bond to answer the accusation against
6 him, or show sufficient cause for not so appearing.

7 4. Failure to present an indictment or information at
8 the first term of the court which may be held after the principal
9 has been admitted to bail, in case where the party was bound over
10 before indictment or information, and the prosecution has not been
11 continued by order of the court.

12 5. The incarceration of the principal in any
13 jurisdiction in the United States:

14 (A) in the case of a misdemeanor, at the time of
15 or not later than the 180th day after the date of the principal's
16 failure to appear in court; or

17 (B) in the case of a felony, at the time of or not
18 later than the 270th day after the date of the principal's failure
19 to appear in court.

20 (b) A surety exonerated under Subdivision 5, Subsection
21 (a), remains obligated to pay costs of court, any reasonable and
22 necessary costs incurred by a county to secure the return of the
23 principal, and interest accrued on the bond amount from the date of
24 the judgment nisi to the date of the principal's incarceration.

25 SECTION 2. Article 22.16, Code of Criminal Procedure, is
26 amended to read as follows:

27 Art. 22.16. REMITTITUR AFTER FORFEITURE. (a) After

1 forfeiture of a bond and before entry of a final judgment [~~the~~
2 ~~expiration of the time limits set by Subsection (c) of this~~
3 ~~article~~], the court shall, on written motion, remit to the surety
4 the amount of the bond, after deducting the costs of court and [~~7~~]
5 any reasonable and necessary costs to the county for the return of
6 the principal, and the interest accrued on the bond amount as
7 provided by Subsection (c) [~~(e) of this article~~] if [~~+~~

8 [~~(1) the principal is incarcerated in the county in~~
9 ~~which the prosecution is pending;~~

10 [~~(2) the principal is incarcerated in another~~
11 ~~jurisdiction and the incarceration is verified as provided by~~
12 ~~Subsection (b) of this article;~~

13 [~~(3)~~] the principal is released on new bail in the case
14 or [~~+~~

15 [~~(4) the principal is deceased; or~~

16 [~~(5)~~] the case for which bond was given is dismissed.

17 (b) For other good cause shown [~~the purposes of Subsection~~
18 ~~(a)(2) of this article, a surety may request confirmation of the~~
19 ~~incarceration of his principal by written request to the law~~
20 ~~enforcement agency of the county where prosecution is pending. A~~
21 ~~law enforcement agency in this state that receives a request for~~
22 ~~verification shall notify the court in which prosecution is pending~~
23 ~~and the surety whether or not the principal is or has been~~
24 ~~incarcerated in another jurisdiction and the date of the~~
25 ~~incarceration.~~

26 [~~(c) A final judgment may be entered against a bond not~~
27 ~~earlier than:~~

1 ~~[(1) nine months after the date the forfeiture was~~
2 ~~entered, if the offense for which the bond was given is a~~
3 ~~misdemeanor; or~~

4 ~~[(2) 18 months after the date the forfeiture was~~
5 ~~entered, if the offense for which the bond was given is a felony.~~

6 ~~[(d) After the expiration of the time limits set by~~
7 ~~Subsection (c) of this article]~~ and before the entry of a final
8 judgment against the bond, the court in its discretion may remit to
9 the surety all or part of the amount of the bond after deducting the
10 costs of court and~~[7]~~ any reasonable and necessary costs to the
11 county for the return of the principal, and the interest accrued on
12 the bond amount as provided by Subsection (c) ~~[(e) of this article]~~.

13 (c) ~~[(e)]~~ For the purposes of this article, interest
14 accrues on the bond amount from the date of forfeiture in the same
15 manner and at the same rate as provided for the accrual of
16 prejudgment interest in civil cases.

17 SECTION 3. Subsection (a), Article 44.04, Code of Criminal
18 Procedure, is amended to read as follows:

19 (a) Pending the determination of any motion for new trial or
20 the appeal from any misdemeanor conviction, the defendant is
21 entitled to be released on reasonable bail~~[7, and if a defendant~~
22 ~~charged with a misdemeanor is on bail, is convicted, and appeals~~
23 ~~that conviction, his bond is not discharged until his conviction is~~
24 ~~final or in the case of an appeal to a court where a trial de novo is~~
25 ~~held, he files an appeal bond as required by this code for appeal~~
26 ~~from the conviction]~~.

27 SECTION 4. Subsections (b) through (e), Article 17.19, Code

1 of Criminal Procedure, are amended to read as follows:

2 (b) If the court or magistrate finds that there is cause for
3 the surety to surrender his principal, the court shall issue a
4 warrant of arrest or capias for the principal. It is an affirmative
5 defense to any liability on the bond that:

6 (1) the court or magistrate refused to issue a warrant
7 of arrest or capias for the principal; and

8 (2) after the refusal to issue the warrant or capias
9 the principal failed to appear.

10 (c) If the court or magistrate before whom the prosecution
11 is pending is not available, the surety may deliver the affidavit to
12 any other magistrate in the county and that magistrate, on a finding
13 of cause for the surety to surrender his principal, shall issue a
14 warrant of arrest or capias for the principal.

15 (d) An arrest warrant or capias issued under this article
16 shall be issued to the sheriff of the county in which the case is
17 pending, and a copy of the warrant or capias shall be issued to the
18 surety or his agent.

19 (e) An arrest warrant or capias issued under this article
20 may be executed by a peace officer, a security officer, or a private
21 investigator licensed in this state.

22 SECTION 5. Article 23.05, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 23.05. CAPIAS AFTER SURRENDER OR FORFEITURE. (a) If
25 [~~Where~~] a forfeiture of bail is declared or a surety surrenders a
26 defendant under Article 17.19, a capias shall be immediately issued
27 for the arrest of the defendant, and when arrested, in its

1 discretion, the court may require the defendant, in order to be
2 released from custody, to deposit with the custodian of funds of the
3 court in which the prosecution is pending current money of the
4 United States in the amount of the new bond as set by the court, in
5 lieu of a surety bond, unless a [~~the~~] forfeiture is taken and [~~has~~
6 ~~been~~] set aside under the third subdivision of Article 22.13 of this
7 code, in which case the defendant and his sureties shall remain
8 bound under the same bail.

9 (b) A capias issued under this article may be executed by a
10 peace officer or by a private investigator licensed under Chapter
11 1702, Occupations Code.

12 (c) A capias under this article must be issued not later
13 than the 10th business day after the date of the court's issuance of
14 the order of forfeiture or order permitting surrender of the bond.

15 (d) The sheriff of each county shall enter a capias issued
16 under this article into a local warrant system not later than the
17 10th business day after the date of issuance of the capias by the
18 clerk of court.

19 SECTION 6. The change in law made by this Act applies only
20 to a bail bond executed on or after the effective date of this Act.
21 A bail bond executed before the effective date of this Act is
22 covered by the law in effect when the bail bond was executed, and
23 the former law is continued in effect for that purpose.

24 SECTION 7. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2003.