

1-1 By: Hinojosa S.B. No. 1336  
1-2 (In the Senate - Filed March 13, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 22, 2003, reported favorably, as amended, by the following  
1-5 vote: Yeas 4, Nays 0; April 22, 2003, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Hinojosa

1-7 Amend S.B. No. 1336 as follows:

1-8 (1) In SECTION 1 of the bill, in amended Article 22.13, Code  
1-9 of Criminal Procedure (page 2, line 25), between "EXONERATE." and  
1-10 "The following", insert "(a)".

1-11 (2) In SECTION 1 of the bill, in added Subdivision 5,  
1-12 Article 22.13, Code of Criminal Procedure (page 2, line 54),  
1-13 between "jurisdiction" and the period, insert the following:  
1-14 in the United States:

1-15 (A) in the case of a misdemeanor, at the time of  
1-16 or not later than the 180th day after the date of the principal's  
1-17 failure to appear in court; or

1-18 (B) in the case of a felony, at the time of or not  
1-19 later than the 270th day after the date of the principal's failure  
1-20 to appear in court

1-21 (3) In SECTION 1 of the bill, in amended Article 22.13, Code  
1-22 of Criminal Procedure (page 2, between lines 60 and 61), insert the  
1-23 following:

1-24 (b) A surety exonerated under Subdivision 5, Subsection  
1-25 (a), remains obligated to pay costs of court, any reasonable and  
1-26 necessary costs incurred by a county to secure the return of the  
1-27 principal, and interest accrued on the bond amount from the date of  
1-28 the judgment nisi to the date of the principal's incarceration.

1-29 (4) In SECTION 1 of the bill, in amended Article 22.13, Code  
1-30 of Criminal Procedure (page 2, lines 55 through 60), strike added  
1-31 Subdivisions 6 and 7.

1-32 (5) Between SECTION 3 and SECTION 4 of the bill (page 3,  
1-33 between lines 49 and 50), insert the following:

1-34 SECTION 4. Subsections (b) through (e), Article 17.19, Code  
1-35 of Criminal Procedure, are amended to read as follows:

1-36 (b) If the court or magistrate finds that there is cause for  
1-37 the surety to surrender his principal, the court shall issue a  
1-38 warrant of arrest or capias for the principal. It is an affirmative  
1-39 defense to any liability on the bond that:

1-40 (1) the court or magistrate refused to issue a warrant  
1-41 of arrest or capias for the principal; and

1-42 (2) after the refusal to issue the warrant or capias  
1-43 the principal failed to appear.

1-44 (c) If the court or magistrate before whom the prosecution  
1-45 is pending is not available, the surety may deliver the affidavit to  
1-46 any other magistrate in the county and that magistrate, on a finding  
1-47 of cause for the surety to surrender his principal, shall issue a  
1-48 warrant of arrest or capias for the principal.

1-49 (d) An arrest warrant or capias issued under this article  
1-50 shall be issued to the sheriff of the county in which the case is  
1-51 pending, and a copy of the warrant or capias shall be issued to the  
1-52 surety or his agent.

1-53 (e) An arrest warrant or capias issued under this article  
1-54 may be executed by a peace officer, a security officer, or a private  
1-55 investigator licensed in this state.

1-56 SECTION 5. Article 23.05, Code of Criminal Procedure, is  
1-57 amended to read as follows:

1-58 Art. 23.05. CAPIAS AFTER SURRENDER OR FORFEITURE. (a) If  
1-59 [Where] a forfeiture of bail is declared or a surety surrenders a  
1-60 defendant under Article 17.19, a capias shall be immediately issued  
1-61 for the arrest of the defendant, and when arrested, in its  
1-62 discretion, the court may require the defendant, in order to be  
1-63 released from custody, to deposit with the custodian of funds of the  
1-64 court in which the prosecution is pending current money of the

2-1 United States in the amount of the new bond as set by the court, in  
2-2 lieu of a surety bond, unless a ~~the~~ forfeiture is taken and ~~has~~  
2-3 ~~been~~ set aside under the third subdivision of Article 22.13 of this  
2-4 code, in which case the defendant and his sureties shall remain  
2-5 bound under the same bail.

2-6 (b) A capias issued under this article may be executed by a  
2-7 peace officer or by a private investigator licensed under Chapter  
2-8 1702, Occupations Code.

2-9 (c) A capias under this article must be issued not later  
2-10 than the 10th business day after the date of the court's issuance of  
2-11 the order of forfeiture or order permitting surrender of the bond.

2-12 (d) The sheriff of each county shall enter a capias issued  
2-13 under this article into a local warrant system not later than the  
2-14 10th business day after the date of issuance of the capias by the  
2-15 clerk of court.

2-16 (6) Renumber existing SECTIONS of the bill accordingly.

2-17 A BILL TO BE ENTITLED  
2-18 AN ACT

2-19 relating to the liability of a criminal defendant and the  
2-20 defendant's sureties on a personal bond or bail bond and to certain  
2-21 procedures in connection with bond forfeiture.

2-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

2-23 SECTION 1. Article 22.13, Code of Criminal Procedure, is  
2-24 amended to read as follows:

2-25 Art. 22.13. CAUSES WHICH WILL EXONERATE. The following  
2-26 causes, and no other, will exonerate the defendant and his  
2-27 sureties, if any, from liability upon the forfeiture taken:

2-28 1. That the bond is, for any cause, not a valid and  
2-29 binding undertaking in law. If it be valid and binding as to the  
2-30 principal, and one or more of his sureties, if any, they shall not  
2-31 be exonerated from liability because of its being invalid and not  
2-32 binding as to another surety or sureties, if any. If it be invalid  
2-33 and not binding as to the principal, each of the sureties, if any,  
2-34 shall be exonerated from liability. If it be valid and binding as  
2-35 to the principal, but not so as to the sureties, if any, the  
2-36 principal shall not be exonerated, but the sureties, if any, shall  
2-37 be.

2-38 2. The death of the principal before the forfeiture  
2-39 was taken.

2-40 3. The sickness of the principal or some  
2-41 uncontrollable circumstance which prevented his appearance at  
2-42 court, and it must, in every such case, be shown that his failure to  
2-43 appear arose from no fault on his part. The causes mentioned in  
2-44 this subdivision shall not be deemed sufficient to exonerate the  
2-45 principal and his sureties, if any, unless such principal appear  
2-46 before final judgment on the bond to answer the accusation against  
2-47 him, or show sufficient cause for not so appearing.

2-48 4. Failure to present an indictment or information at  
2-49 the first term of the court which may be held after the principal  
2-50 has been admitted to bail, in case where the party was bound over  
2-51 before indictment or information, and the prosecution has not been  
2-52 continued by order of the court.

2-53 5. The incarceration of the principal in any  
2-54 jurisdiction.

2-55 6. The exclusion of the principal from entry into the  
2-56 United States by an agency or department of the federal government.

2-57 7. The failure of the state to enter an arrest warrant  
2-58 or capias issued for the principal into a statewide or multistate  
2-59 arrest warrant data bank before the 31st day after the date on which  
2-60 the principal failed to appear in court.

2-61 SECTION 2. Article 22.16, Code of Criminal Procedure, is  
2-62 amended to read as follows:

2-63 Art. 22.16. REMITTITUR AFTER FORFEITURE. (a) After  
2-64 forfeiture of a bond and before entry of a final judgment ~~the~~  
2-65 ~~expiration of the time limits set by Subsection (c) of this~~  
2-66 ~~article~~, the court shall, on written motion, remit to the surety  
2-67 the amount of the bond, after deducting the costs of court and ~~7~~

3-1 any reasonable and necessary costs to the county for the return of  
3-2 the principal, and the interest accrued on the bond amount as  
3-3 provided by Subsection (c) [~~(e) of this article~~] if[~~+~~

3-4 [~~(1) the principal is incarcerated in the county in~~  
3-5 ~~which the prosecution is pending,~~

3-6 [~~(2) the principal is incarcerated in another~~  
3-7 ~~jurisdiction and the incarceration is verified as provided by~~  
3-8 ~~Subsection (b) of this article,~~

3-9 [~~(3)~~] the principal is released on new bail in the case  
3-10 or[~~+~~

3-11 [~~(4) the principal is deceased, or~~

3-12 [~~(5)~~] the case for which bond was given is dismissed.

3-13 (b) For other good cause shown [~~the purposes of Subsection~~  
3-14 ~~(a)(2) of this article, a surety may request confirmation of the~~  
3-15 ~~incarceration of his principal by written request to the law~~  
3-16 ~~enforcement agency of the county where prosecution is pending. A~~  
3-17 ~~law enforcement agency in this state that receives a request for~~  
3-18 ~~verification shall notify the court in which prosecution is pending~~  
3-19 ~~and the surety whether or not the principal is or has been~~  
3-20 ~~incarcerated in another jurisdiction and the date of the~~  
3-21 ~~incarceration.~~

3-22 [~~(c) A final judgment may be entered against a bond not~~  
3-23 ~~earlier than:~~

3-24 [~~(1) nine months after the date the forfeiture was~~  
3-25 ~~entered, if the offense for which the bond was given is a~~  
3-26 ~~misdemeanor, or~~

3-27 [~~(2) 18 months after the date the forfeiture was~~  
3-28 ~~entered, if the offense for which the bond was given is a felony.~~

3-29 [~~(d) After the expiration of the time limits set by~~  
3-30 ~~Subsection (c) of this article] and before the entry of a final  
3-31 judgment against the bond, the court in its discretion may remit to  
3-32 the surety all or part of the amount of the bond after deducting the  
3-33 costs of court and[~~+~~] any reasonable and necessary costs to the  
3-34 county for the return of the principal, and the interest accrued on  
3-35 the bond amount as provided by Subsection (c) [~~(e) of this article~~].~~

3-36 (c) [~~(e)~~] For the purposes of this article, interest  
3-37 accrues on the bond amount from the date of forfeiture in the same  
3-38 manner and at the same rate as provided for the accrual of  
3-39 prejudgment interest in civil cases.

3-40 SECTION 3. Subsection (a), Article 44.04, Code of Criminal  
3-41 Procedure, is amended to read as follows:

3-42 (a) Pending the determination of any motion for new trial or  
3-43 the appeal from any misdemeanor conviction, the defendant is  
3-44 entitled to be released on reasonable bail[, ~~and if a defendant~~  
3-45 ~~charged with a misdemeanor is on bail, is convicted, and appeals~~  
3-46 ~~that conviction, his bond is not discharged until his conviction is~~  
3-47 ~~final or in the case of an appeal to a court where a trial de novo is~~  
3-48 ~~held, he files an appeal bond as required by this code for appeal~~  
3-49 ~~from the conviction].~~

3-50 SECTION 4. The change in law made by this Act applies only  
3-51 to a bail bond executed on or after the effective date of this Act.  
3-52 A bail bond executed before the effective date of this Act is  
3-53 covered by the law in effect when the bail bond was executed, and  
3-54 the former law is continued in effect for that purpose.

3-55 SECTION 5. This Act takes effect immediately if it receives  
3-56 a vote of two-thirds of all the members elected to each house, as  
3-57 provided by Section 39, Article III, Texas Constitution. If this  
3-58 Act does not receive the vote necessary for immediate effect, this  
3-59 Act takes effect September 1, 2003.

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