

By: Fletcher

H.B. No. 1686

Substitute the following for H.B. No. 1686:

By: Gallego

C.S.H.B. No. 1686

A BILL TO BE ENTITLED

AN ACT

relating to the discharge of a surety's liability on a bail bond in a criminal case.

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

SECTION 1. Article 17.09, Code of Criminal Procedure, is amended to read as follows:

Art. 17.09. DURATION; ORIGINAL AND SUBSEQUENT PROCEEDINGS; NEW BAIL

Sec. 1. Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for the defendant's ~~[his]~~ personal appearance before a court or magistrate, to answer a charge against the defendant ~~[him]~~, the ~~[said]~~ bond shall be valid and binding on ~~[upon]~~ the defendant and the defendant's ~~[his]~~ sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings related ~~[had relative]~~ to the charge, and each ~~[such]~~ bond shall be ~~[so]~~ conditioned as described by this section, except as otherwise ~~[hereinafter]~~ provided by this article.

Sec. 2. When a defendant has once given bail for the defendant's ~~[his]~~ appearance in answer to a criminal charge, the defendant may ~~[he shall]~~ not be required to give another bond in the course of the same criminal action except as otherwise ~~[herein]~~

1 provided by this article.

2       Sec. 3. If [~~Provided that whenever~~], during the course of  
3 the action, the judge or magistrate in whose court the [~~such~~] action  
4 is pending finds that the bond is defective, excessive, or  
5 insufficient in amount, or that the sureties, if any, are not  
6 acceptable, or for any other good and sufficient cause, the [~~such~~]  
7 judge or magistrate may, either in term-time or in vacation, order  
8 the accused to be rearrested[~~r~~] and require the accused to give  
9 another bond in an [~~such~~] amount that [~~as~~] the judge or magistrate  
10 considers [~~may deem~~] proper. When the subsequent [~~such~~] bond is  
11 [~~so~~] given and approved by the judge or magistrate, the defendant  
12 shall be released from custody.

13       Sec. 4. (a) The judge or magistrate in whose court the  
14 criminal action is pending shall discharge a surety's liability on  
15 a bond if the surety:

16               (1) files with the judge or magistrate an affidavit  
17 stating that:

18                       (A) more than five years have elapsed since the  
19 date on which the surety posted the bond;

20                       (B) the surety no longer wishes to be a surety on  
21 the bond; and

22                       (C) the surety will give the prosecuting attorney  
23 notice of the affidavit; and

24               (2) gives the prosecuting attorney the notice  
25 described by Subdivision (1)(C).

26       (b) If the judge or magistrate discharges a surety's  
27 liability under Subsection (a) and an indictment or information

1 remains pending against the defendant, the judge or magistrate  
2 shall issue a capias for the defendant.

3 Sec. 5. Notwithstanding any other provision of this  
4 article, the judge or magistrate in whose court a criminal action is  
5 pending may not order the accused to be rearrested or require the  
6 accused to give another bond in a higher amount because the accused:

- 7 (1) withdraws a waiver of the right to counsel; or  
8 (2) requests the assistance of counsel, appointed or  
9 retained.

10 SECTION 2. The change in law made by this Act applies only  
11 to a bail bond that is executed on or after the effective date of  
12 this Act. A bail bond that is executed before the effective date of  
13 this Act is governed by the law in effect on the date the bail bond  
14 was executed, and the former law is continued in effect for that  
15 purpose.

16 SECTION 3. This Act takes effect September 1, 2011.