

By: Phillips

H.B. No. 2467

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 17.16, Code of Criminal Procedure, is amended to read as follows:

Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF INCARCERATION. (a) A surety may before forfeiture relieve the surety [~~himself~~] of the surety's [~~his~~] undertaking by:

(1) surrendering the accused into the custody of the sheriff of the county where the prosecution is pending; or

(2) delivering to the sheriff, prosecuting attorney, and clerk of the court of the county where the prosecution is pending an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state, except that the surety may not use the method provided by this subdivision and must surrender the accused as described by Subdivision (1) if the accused:

(A) is not a citizen or national of the United States; and

(B) is unlawfully present in the United States according to the terms of the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.).

1           (b) On receipt of an affidavit described by Subsection  
2 (a)(2), the sheriff of the county where the prosecution is pending  
3 shall verify whether the accused is incarcerated as stated in the  
4 affidavit. If the sheriff verifies the statement in the affidavit,  
5 the sheriff shall present the affidavit to the court or magistrate  
6 before which the prosecution is pending.

7           (c) On receipt of the verified affidavit under Subsection  
8 (b), the court or magistrate before which the prosecution is  
9 pending may direct the clerk of the court to issue a capias for the  
10 arrest of the accused.

11           (d) For the purposes of Subsection (a)(2) [~~of this article~~],  
12 the bond is discharged and the surety is absolved of liability on  
13 the bond on the sheriff's verification of the incarceration of the  
14 accused.

15           SECTION 2. The change in law made by this Act to Article  
16 17.16, Code of Criminal Procedure, applies only to a bail bond that  
17 is executed on or after the effective date of this Act. A bail bond  
18 executed before the effective date of this Act is governed by the  
19 law in effect when the bail bond was executed, and the former law is  
20 continued in effect for that purpose.

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