

By: Patrick

S.B. No. 876

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~~[7]~~ 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, the defendant shall be released from
12 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 files with the judge or magistrate a motion for
16 discharge supported by an affidavit stating that:

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

19 (2) either the defendant has never been required to
20 appear in court in the criminal action or, during the three-year
21 period preceding the date of the motion for discharge or on that
22 date, there was no apparent activity in the criminal action and the
23 prosecutor did not file a written request to set a date for the
24 action;

25 (3) the bond was not forfeited before or on the date of
26 the motion for discharge;

27 (4) the surety no longer wishes to be a surety on the

1 bond;

2 (5) the surety has served the defendant's attorney, if
3 the defendant is represented by an attorney, with a copy of the
4 motion for discharge in the manner provided by Rule 21a, Texas Rules
5 of Civil Procedure; and

6 (6) the surety has provided a copy of the motion for
7 discharge to the prosecuting attorney.

8 (b) If the judge or magistrate discharges a surety's
9 liability under Subsection (a) and the indictment, information, or
10 complaint remains pending against the defendant, the judge or
11 magistrate may issue:

12 (1) a capias for the arrest of the defendant; or

13 (2) a summons for the defendant to appear before the
14 judge or magistrate for the purpose of giving another bond.

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

19 (1) withdraws a waiver of the right to counsel; or

20 (2) requests the assistance of counsel, appointed or
21 retained.

22 SECTION 2. The change in law made by this Act applies only
23 to a bail bond that is executed on or after the effective date of
24 this Act. A bail bond that is executed before the effective date of
25 this Act is governed by the law in effect on the date the bail bond
26 was executed, and the former law is continued in effect for that
27 purpose.

1 SECTION 3. This Act takes effect September 1, 2013.