

SUBJECT: Discharge of a surety's liability on a bail bond in a criminal case

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Parker, White, Riddle, J.D. Sheffield

0 nays

3 absent — Allen, Rose, Toth

SENATE VOTE: On final passage, April 18 — 30-0

WITNESSES: No public hearing

DIGEST: SB 876 would require a judge or magistrate in whose court a criminal action was pending to discharge a surety's liability on a bond if the surety filed with the judge or magistrate a motion for discharge supported by an affidavit stating that:

- more than five years had elapsed since the date on which the surety posted the bond;
- either the defendant had never been required to appear in court in the criminal action or, during the three-year period preceding the date of the motion for discharge, there was no apparent activity in the criminal action and the prosecutor did not file a written request to set a date for the action;
- the bond was not forfeited before or on the date of the motion for discharge;
- the surety no longer wished to be a surety on the bond;
- the surety had served the defendant's attorney, if the defendant was represented by an attorney, with a copy of the motion for discharge in the manner provided by the Texas Rules of Civil Procedure; and
- the surety had provided a copy of the motion for discharge to the prosecuting attorney.

If the judge or magistrate discharged a surety's liability under the bill and the indictment, information, or complaint remained pending against the defendant, the judge or magistrate could issue:

- a capias, or arrest warrant, for the arrest of the defendant; or
- a summons for the defendant to appear before the judge or magistrate for the purpose of giving another bond.

The bill would take effect September 1, 2013 and would apply only to a bail bond executed on or after that date.

**SUPPORTERS  
SAY:**

SB 876 would fix a flaw in the bail bond process, allowing resolution of bonds that would otherwise be left in effect indefinitely. Currently in Texas a bail bond that is written to obtain the release of a defendant from custody is valid for an indefinite amount of time. If the defendant fails to appear, the bond is forfeited and the state has four years to prosecute the forfeiture. However, if the underlying criminal case is never set for a hearing, the bond remains in effect forever. Courts have begun a practice of setting hearings in old cases just to forfeit the bond and collect the bond revenue. This bill would allow for discharge of those bonds instead, allowing these bonds to be resolved and protecting the private bail bond industry from improper government overreach.

The bill would provide sufficient opportunity for a prosecuting attorney to object. By requiring the surety to provide notice to a prosecutor, the bill would ensure that any objections or concerns about the discharge of a bond could be raised.

**OPPONENTS  
SAY:**

SB 876 should include a provision to ensure that the prosecuting attorney in the underlying criminal case had no objections to the surety's discharge. The prosecuting attorney in a case should have a chance to prevent the discharge of a surety's liability on a bond if there are reasonable objections to the discharge.