

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 876
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently in Texas, a bail bond that is written to obtain the release of a defendant from custody is valid for an infinite amount of time. If the defendant fails to appear, the State has four years to prosecute the resulting bond forfeiture. However, if the criminal case is never set for a hearing, the bond remains in effect forever. There has been an increasing number of incidents wherein the State is setting old criminal cases for hearings with no intent to go forward with the criminal case; instead they seek to forfeit the bond so that forfeiture may be prosecuted. Once the forfeiture proceeds to judgment, the underlying criminal case is dismissed. By waiting until judgment in the bond forfeiture is entered before the court dismisses a case, the State is manipulating the system in order to increase bond revenue. C.S.S.B. 876 intends to end this practice.

C.S.S.B. 876 amends current law relating to the discharge of a surety's liability on a bail bond in a criminal case.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 17.09, Code of Criminal procedure, as follows:

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

Sec. 1. Requires the bond, 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 personal appearance before a court or magistrate, to answer a charge against the defendant, to be valid and binding on, rather than upon, the defendant and the defendant's 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 is authorized to be transferred, and for any and all subsequent proceedings related to the charge, and each bond is required to be conditioned as described by this section, except as otherwise provided by this article. Makes nonsubstantive changes.

Sec. 2. Prohibits the defendant, when a defendant has once given bail for the defendant's appearance in answer to a criminal charge, from being required to give another bond in the course of the same criminal action except as otherwise provided by this article. Makes nonsubstantive changes.

Sec. 3. Authorizes the judge or magistrate, if, during the course of the action, the judge or magistrate in whose court the action is pending finds that the bond is defective, excessive, or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, to either in term-time or in vacation, order the accused to be rearrested and require the accused to give

another bond in an amount that the judge or magistrate considers proper. Requires the defendant, when the subsequent bond is given and approved by the judge or magistrate, to be released from custody.

Sec. 4. (a) Requires the judge or magistrate in whose court the criminal action is pending to discharge a surety's liability on a bond if the surety files with the judge or magistrate a motion for discharge supported by an affidavit stating that:

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

(2) either the defendant has 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 or on that date, 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;

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

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

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

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

(b) Authorizes the judge or magistrate, if the judge or magistrate discharges a surety's liability under Subsection (a) and an indictment, information, or complaint remains pending against the defendant, to issue a capias 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.

Sec. 5. Redesignates existing Section 4 as Section 5. Makes no further change to this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.