

CHAPTER 1047

S.B. No. 185

AN ACT

relating to the liability of a surety on a bond in a criminal case, the remittitur of a bond, and the surrender of the principal to the court by surety.

*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; ~~[SURETY MAY] SURRENDER OR INCARCERATION OF [HIS] PRINCIPAL BEFORE FORFEITURE.~~* (a) *A surety ~~[Those who have become bail for the accused, or either of them,]~~ may before forfeiture ~~[at any time]~~ relieve himself ~~[themselves]~~ of his ~~[their]~~ 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 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.*

(b) *For the purposes of Subsection (a)(2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the sheriff's verification of the incarceration of the accused ~~[he is prosecuted].~~*

SECTION 2. Article 17.19, Code of Criminal Procedure, is amended to read as follows:

Art. 17.19. *SURETY MAY OBTAIN A WARRANT.* (a) *Any surety, desiring to surrender his principal, may file an ~~[upon making]~~ affidavit of such intention before the*

court or magistrate before which the prosecution is pending. *The affidavit must state the:*

- (1) court and cause number of the case;
- (2) name of the defendant;
- (3) offense with which the defendant is charged;
- (4) date of the bond; and
- (5) cause for the surrender.

(b) *If the court or magistrate finds that there is cause for the surety to surrender his principal, the court shall issue a warrant of arrest for the principal.*

(c) *If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender his principal, shall issue a warrant of arrest for the principal.*

(d) *An arrest warrant issued under this article shall be issued to the sheriff of the county in which the case is pending, and a copy of the warrant shall be issued to the surety or his agent.*

(e) *An arrest warrant issued under this article may be executed by a peace officer, a security officer, or a private investigator licensed in this state, ~~obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases~~.*

SECTION 3. Article 22.16, Code of Criminal Procedure, is amended to read as follows:

Art. 22.16. *REMITTITUR AFTER FORFEITURE [THE COURT MAY REMIT]. (a) After forfeiture of a bond and before the expiration of the time limits set by Subsection (c) of this article, the court shall, on written motion, remit to the surety the amount of the bond after deducting the costs of court, any reasonable costs to the county for the return of the principal, and the interest accrued on the bond amount as provided by Subsection (e) of this article if:*

- (1) *the principal is incarcerated in the county in which the prosecution is pending;*
- (2) *the principal is incarcerated in another jurisdiction and the incarceration is verified as provided by Subsection (b) of this article;*
- (3) *the principal is released on new bail in the case;*
- (4) *the principal is deceased; or*
- (5) *the case for which bond was given is dismissed.*

(b) *For the purposes of Subsection (a)(2) of this article, a surety may request confirmation of the incarceration of his principal by written request to the law enforcement agency of the county where prosecution is pending. A law enforcement agency in this state that receives a request for verification shall notify the court in which prosecution is pending and the surety whether or not the principal is or has been incarcerated in another jurisdiction and the date of the incarceration.*

(c) *A final judgment may be entered against a bond not earlier than:*

- (1) *nine months after the date the forfeiture was entered, if the offense for which the bond was given is a misdemeanor; or*
- (2) *18 months after the date the forfeiture was entered, if the offense for which the bond was given is a felony.*

(d) *After the expiration of the time limits set by Subsection (c) of this article and before the entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the costs of court, any reasonable costs to the county for the return of the principal, and the interest accrued on the bond amount as provided by Subsection (e) of this article.*

(e) *For the purposes of this article, interest accrues on the bond amount from the date of forfeiture in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases. [If, before final judgment is entered*

~~against the bail, the principal appears or is arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond if the arrest or appearance is a direct result of money spent or information furnished by the surety or is because of the principal's initiative in submitting himself to the authority of the court, sheriff, or other peace officers.]~~

SECTION 4. Chapter 22, Code of Criminal Procedure, is amended by adding Article 22.17 to read as follows:

*Art. 22.17. SPECIAL BILL OF REVIEW. (a) Not later than two years after the date a final judgment is entered in a bond forfeiture proceeding, the surety on the bond may file with the court a special bill of review. A special bill of review may include a request, on equitable grounds, that the final judgment be reformed and that all or part of the bond amount be remitted to the surety, after deducting the costs of court, any reasonable costs to the county for the return of the principal, and the interest accrued on the bond amount from the date of forfeiture. The court in its discretion may grant or deny the bill in whole or in part.*

*(b) For the purposes of this article, interest accrues on the bond amount from the date of:*

*(1) forfeiture to the date of final judgment in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases; and*

*(2) final judgment to the date of the order for remittitur at the same rate as provided for the accrual of postjudgment interest in civil cases.*

SECTION 5. The provisions of the Code of Criminal Procedure relating to the surrender, forfeiture, and remittitur of a bail bond apply to all counties of the state.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 25, 1987, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on June 1, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendments, on May 21, 1987, by the following vote: Yeas 142, Nays 1, two present not voting.

Approved June 20, 1987.

Effective June 20, 1987.