

- SUBJECT:** Revising bail bond and capias procedures
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Hinojosa, Garcia, Green, Keel, Nixon, Smith
0 nays
3 absent — Dunnam, Talton, Wise
- SENATE VOTE:** On final passage, April 30 — voice vote
- WITNESSES:** (*On House companion bill, HB 1481:*)
For — Tillmin G. Welch, Professional Bondsmen of Texas

Against — Kathleen Braddock, Harris County District Attorney’s Office; Sgt. Bruce Carr, Harris County Sheriff’s Department; John Dahill, Dallas County Commissioners Court and Dallas County District Attorney’s Office; Marion A. Damen; Spencer R. Giles; Judith K. Magness; David L. Finney
- BACKGROUND:** A bail bond is a written undertaking entered into by a defendant to appear before a court or magistrate to answer a criminal accusation. Upon execution of a bail bond, the defendant may deposit the bond amount with the custodian of funds of the court in which the prosecution is pending instead of using a surety. A bond forfeiture occurs when the defendant fails to meet the conditions of the bail bond.

A surety is a person who undertakes to pay money or perform other acts in the event that the defendant fails to do so. The surety is directly and immediately liable for the debt.

A supersedeas bond is a deposited bond that suspends enforcement of a final judgment pending an appeal. Capias is a court order that authorizes the seizure of the defendant upon bond forfeiture.
- DIGEST:** CSSB 403 would amend the Code of Criminal Procedure by changing several provisions concerning bail bonds and sureties on those bonds.

The bill would specify that sureties on a bail bond no longer would be liable after a defendant received an order of deferred adjudication or was acquitted, sentenced, placed on community supervision, or dismissed from the charge.

A surety would be deemed in default of a bail bond from the time execution could be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment was superseded by the posting of a supersedeas bond.

CSSB 403 would add to the options available to a court on a bond forfeiture trial by allowing the court to approve any proposed settlement of the liability on the forfeiture that was agreed to by the state and by the defendant or the defendant's sureties, if applicable. The state would have to bring a bond forfeiture action within four years of the date the defendant failed to appear in court.

The bill would authorize the execution of a court-issued *capias* by a peace officer, a surety on the forfeited bond, or a licensed private investigator to arrest a defendant who had forfeited bond. A private investigator who executed a *capias* on behalf of a surety could not enter a residence without consent of the occupants, execute the *capias* without written authorization from the surety, wear an insignia that implied that the private investigator was a government official or agent, or use deadly force. The bill also would specify procedures for an arrest by a private investigator, including the proper jurisdiction to which a defendant should be taken after arrest.

The bill would take effect September 1, 1999, and would apply to bail bonds and *capias* or arrest warrants issued after that date.

**SUPPORTERS
SAY:**

CSSB 403 would clarify several important issues. A surety no longer would be liable for a bond after a defendant's case was finally adjudicated. Also, a judgment in a bond forfeiture suit, as in all other civil cases, would become final 30 days after the court had entered a judgment, and a judgment would not be final if the defendant had posted a supersedeas bond. This would prevent counties from considering a judgment final from the day it was entered, which has the effect of preventing defendants from filing motions for new hearings or appeals.

The bill would authorize judges to accept a bond forfeiture settlement to which all parties agreed. This would encourage settlement and would economize judicial resources. The bill also would establish a four-year statute of limitations for beginning a bond forfeiture suit. Some counties may initiate bond forfeiture proceedings five to six years after the forfeiture date. This leaves bondsmen with much uncertainty, as they cannot act to collect until the proceedings begin. A four-year statute of limitations would provide some predictability for bondsmen's business operations.

CSSB 403 would provide clear ground rules for private investigators who execute *capias* actions. Under current law, a private investigator may, in some circumstances, go beyond what a peace officer is allowed to do in arresting a defendant on a *capias*. This bill would provide safeguards for the public by prohibiting a private investigator from using deadly force or entering a residence without consent.

OPPONENTS
SAY:

This bill is unnecessary. The current system has worked well for all parties involved. The bill is stacked to help bail bondsmen earn more money.

With the bill's special provisions for private investigators, a county could be seen as liable to the extent that a private investigator was seen by a court as acting on behalf of the county.

NOTES:

The companion bill, HB 1481 by Hinojosa, was reported favorably as substituted by the House Criminal Jurisprudence Committee on April 27.