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SENATE BILL 671

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Jacob R. Candelaria

AN ACT

RELATING TO BAIL; PROVIDING THAT THE COURT SHALL VACATE ANY FORFEITURE HEARING AND EXONERATE BOND UPON DELIVERY OF THE ACCUSED TO THE COURT OR A DETENTION FACILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-3-2 NMSA 1978 (being Laws 1972, Chapter 71, Section 9, as amended) is amended to read:

"31-3-2. FAILURE TO APPEAR--FORFEITURE OF BAIL BONDS.--

A. Whenever [~~any~~] a person fails to appear at the time and place fixed by the terms of recognizance, the court may issue a warrant for [~~his~~] the person's arrest.

B. Whenever a person fails to appear at the time and place fixed by the terms of [~~his~~] a bail bond, the court:

(1) may issue a warrant for [~~his~~] the person's arrest; and

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1 (2) may declare a forfeiture of the bail. If
2 the court declares a forfeiture, it shall:

3 (a) declare such forfeiture at the time
4 of nonappearance;

5 (b) give written notice thereof to the
6 surety within four working days of declaration; and

7 (c) issue a bench warrant for the
8 person's arrest.

9 C. The court may direct that a forfeiture be set
10 aside, upon such conditions as the court may impose, if it
11 appears that justice does not require the enforcement of the
12 forfeiture.

13 D. Upon delivery of the defendant by the surety, an
14 agent of the surety or law enforcement to the court or a
15 detention facility, the court shall absolve the surety of
16 responsibility, vacate the forfeiture hearing and exonerate
17 bond.

18 [~~D.~~] E. When a forfeiture has not been set aside,
19 the court shall on motion enter a judgment of default, and
20 execution may issue thereon. By entering into a bail bond, the
21 obligors submit to the jurisdiction of the court and
22 irrevocably appoint the clerk of the court as their agent upon
23 whom papers affecting their liability may be served. Liability
24 of the surety may be enforced on motion without the necessity
25 of an independent action.

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1 ~~[E-]~~ F. Notice of the motion to enter a judgment of
2 default may be served pursuant to the rules of criminal
3 procedure or may be served on the clerk of the court, who shall
4 forthwith mail copies to the obligors at their last known
5 address. The notice shall require the sureties to appear on or
6 before a given date and show cause why judgment shall not be
7 entered against them for the amount of the bail bond or
8 recognizance. If good cause is not shown, the court may then
9 enter judgment against the obligors on the recognizance, for
10 such sum as it sees fit, not exceeding the penalty fixed by the
11 bail bond or recognizance.

12 ~~[F-]~~ G. When a judgment has been rendered against
13 the defendant or surety for the whole or part of the penalty of
14 a forfeited recognizance, the court rendering such judgment
15 shall remit the amount thereof when, after such rendition, the
16 accused has been arrested and surrendered to the proper court
17 to be tried on such charge or to answer the judgment of the
18 court, provided that the apprehension of the accused in some
19 way was aided by the surety's efforts or by information
20 supplied by the surety.

21 ~~[G-]~~ H. If any amount remains unpaid ten days after
22 entry of judgment, the court may issue execution for
23 satisfaction of judgment.

24 ~~[H-]~~ I. In the event that an obligor does not
25 possess property in this state sufficient to satisfy a judgment

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1 against it for the whole or part of the penalty of a forfeited
2 recognizance, the court entering judgment against the obligor
3 on the recognizance shall send written notification to the
4 superintendent of insurance. Immediately upon receipt of such
5 written notification and pursuant to Section 46-6-4 NMSA 1978,
6 the superintendent of insurance shall inform the obligor that
7 unless the judgment is paid or an appeal, writ of error or
8 supersedeas is taken within thirty days of the rendition of the
9 judgment or decree, such obligor shall forfeit all right to do
10 business in this state. If timely appeal, writ of error or
11 supersedeas is not taken, the superintendent of insurance shall
12 immediately take whatever steps necessary to revoke the right
13 of the obligor to do business in this state."