~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 21, 2012

**H. 4572**

Introduced by Rep. Rutherford

S. Printed 3/21/12--H.

Read the first time January 11, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4572) to amend Section 38‑53‑50, as amended, Code of Laws of South Carolina, 1976, relating to surety relieved on bond and surrender of a defendant, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 38‑53‑50(C), by deleting the subsection in its entirety and inserting:

/ (C) If the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 38‑53‑50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SURETY RELIEVED ON BOND AND SURRENDER OF A DEFENDANT, SO AS TO DELETE LANGUAGE PROVIDING A PROCEDURE THROUGH WHICH A SURETY MAY BE RELIEVED OF LIABILITY FOR A BAIL BOND UPON FILING OF AN AFFIDAVIT STATING CERTAIN INFORMATION WHEN THE DEFENDANT IS INCARCERATED BY THE SURETY OR A LAW ENFORCEMENT AGENCY AS A RESULT OF A BENCH WARRANT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑53‑50 of the 1976 Code, as last amended by Act 346 of 2008, is further amended to read:

“Section 38‑53‑50. (A) A surety desiring to be relieved on a bond for good cause shall file with the clerk of court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor’s office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and notify all parties of the hearing date. At the time of the filing of the motion, a fee of twenty dollars must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk’s office. The fee will cover the cost of copies of the motion required by the surety.

(B) If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety, within three business days following recommitment, must file with the detention facility and the court an affidavit clocked in with the clerk of court on a form provided by the Division of Court Administration stating the facts to support the surrender of the defendant for good cause. Nonpayment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant. When the defendant and the affidavit are presented at the appropriate detention facility, the facility shall take custody of the defendant. When the affidavit is filed with the court, the surety also shall file a motion to be relieved on the bond pursuant to subsection (A). A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16.

(C) ~~If the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed, the surety is relieved of all liability on the bail bond by the court.~~

~~(D)~~ After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.”

SECTION 2. This act takes effect upon approval by the Governor.

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