

ASSEMBLY BILL NO. 38—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to bail. (BDR 14-399)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to bail; authorizing the electronic transmission of certain notices relating to bail; requiring certain persons who are engaged in certain businesses relating to bail to receive electronic transmissions relating to bail; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that, under certain circumstances, a bail bond posted for an original offense charged must be transferred to the clerk of the court in which a related public offense is later charged and notice of the transfer must be mailed to the surety on the bond and the bail agent who executed the bond. (NRS 178.502) **Section 2** of this bill authorizes the electronic transmission of the notice of such a transfer.

Existing law provides that, under certain circumstances, if a defendant fails to make a required appearance in court, the court shall: (1) not later than 45 days after the date on which the defendant failed to appear, order the issuance of a warrant for the arrest of the defendant; and (2) direct that each surety and the local agent of each surety or depositor, as applicable, be given notice by certified mail that the defendant failed to appear. (NRS 178.508) **Section 3** of this bill: (1) requires the court to issue a warrant for the arrest of the defendant not later than 14 days after the defendant’s failure to appear; and (2) authorizes the electronic transmission of the notice of the defendant’s failure to appear. **Section 3** also provides that, in the case of electronic transmission, a receipt of delivery must be requested.

Existing law requires notice of a motion to enforce liability for a bond to be mailed to the obligor. (NRS 178.514) **Section 4** of this bill authorizes the electronic transmission of the notice of such a motion.

Section 5 of this bill requires, with certain exceptions, every bail agent and insurer authorized to write surety in this State and every subsidiary corporation of



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23 any such insurer to maintain a means of receiving electronic transmissions and to
24 receive electronic transmissions pursuant to **sections 2-4** of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 178 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *As used in NRS 178.484 to 178.548, inclusive, and this section,*
4 *unless the context otherwise requires, “electronic transmission,”*
5 *“electronically transmit” or “electronically transmitted” means*
6 *any form or process of communication not directly involving the*
7 *physical transfer of paper or another tangible medium which:*

8 1. *Is suitable for the retention, retrieval and reproduction of*
9 *information by the recipient; and*

10 2. *Is retrievable and reproducible in paper form by the*
11 *recipient through an automated process used in conventional*
12 *commercial practice.*

13 **Sec. 2.** NRS 178.502 is hereby amended to read as follows:

14 178.502 1. A person required or permitted to give bail shall
15 execute a bond for the person’s appearance. The magistrate or court
16 or judge or justice, having regard to the considerations set forth in
17 NRS 178.498, may require one or more sureties or may authorize
18 the acceptance of cash or bonds or notes of the United States in an
19 amount equal to or less than the face amount of the bond.

20 2. Any bond or undertaking for bail must provide that the bond
21 or undertaking:

22 (a) Extends to any action or proceeding in a Justice Court,
23 municipal court or district court:

24 (1) Arising from the charge on which bail was first given in
25 any of these courts; and

26 (2) Arising from a later charge, filed before the expiration of
27 the periods provided in subsection 4, which is substantially similar
28 to the charge upon which bail was first given and is based upon the
29 same act or omission as that charge; and

30 (b) Remains in effect until exonerated by the court.

31 ➤ This subsection does not require that any bond or undertaking
32 extend to proceedings on appeal.

33 3. If an action or proceeding against a defendant who has been
34 admitted to bail is transferred to another trial court, the bond or
35 undertaking must be transferred to the clerk of the court to which
36 the action or proceeding has been transferred.

37 4. If the action or proceeding against a defendant who has been
38 admitted to bail is dismissed, the bail must not be exonerated until a
39 period of 30 days has elapsed from the entry of the order of



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1 dismissal unless the defendant requests that bail be exonerated
2 before the expiration of the 30-day period. If no formal action or
3 proceeding is instituted against a defendant who has been admitted
4 to bail, the bail must not be exonerated until a period of 30 days has
5 elapsed from the day the bond or undertaking is posted unless the
6 defendant requests that bail be exonerated before the expiration of
7 the 30-day period.

8 5. If, within the periods provided in subsection 4, the defendant
9 is charged with a public offense arising out of the same act or
10 omission supporting the charge upon which bail was first given, the
11 prosecuting attorney shall forthwith notify the clerk of the court
12 where the bond was posted, the bail must be applied to the public
13 offense later charged, and the bond or undertaking must be
14 transferred to the clerk of the appropriate court. Within 10 days after
15 its receipt, the clerk of the court to whom the bail is transferred shall
16 mail *or electronically transmit* notice of the transfer to the surety on
17 the bond and the bail agent who executed the bond.

18 6. Bail given originally on appeal must be deposited with the
19 magistrate or the clerk of the court from which the appeal is taken.

20 **Sec. 3.** NRS 178.508 is hereby amended to read as follows:

21 178.508 1. If the defendant fails to appear when the
22 defendant's presence in court is lawfully required for the
23 commission of a misdemeanor and the failure to appear is not
24 excused or is lawfully required for the commission of a gross
25 misdemeanor or felony, the court shall:

26 (a) Enter upon its minutes that the defendant failed to appear;

27 (b) Not later than ~~145~~ *14 judicial* days after the date on which
28 the defendant failed to appear, order the issuance of a warrant for
29 the arrest of the defendant; and

30 (c) If the undertaking exceeds \$50 or money deposited instead
31 of bail bond exceeds \$500, direct that each surety and the local
32 agent of each surety, or the depositor if the depositor is not the
33 defendant, be given notice that the defendant has failed to appear, by
34 certified mail *or electronic transmission, receipt of delivery*
35 *requested*, within 20 days after the date on which the defendant
36 failed to appear. The court shall execute an affidavit of such mailing
37 *or electronic transmission* to be kept as an official public record of
38 the court and shall direct that a copy of the notice be transmitted to
39 the prosecuting attorney at the same time that notice is given to each
40 surety or the depositor.

41 2. Except as otherwise provided in subsection 3 and NRS
42 178.509, an order of forfeiture of any undertaking or money
43 deposited instead of bail bond must be prepared by the clerk of the
44 court and signed by the court. An order of forfeiture must include
45 the date on which the forfeiture becomes effective. The undertaking



1 or money deposited instead of bail bond is forfeited 180 days after
2 the date on which the notice is mailed *or electronically transmitted*
3 pursuant to subsection 1.

4 3. The court may extend the date of the forfeiture for any
5 reasonable period set by the court if the surety or depositor submits
6 to the court:

7 (a) An application for an extension and the court determines that
8 the surety or the depositor is making reasonable and ongoing efforts
9 to bring the defendant before the court.

10 (b) An application for an extension on the ground that the
11 defendant is temporarily prevented from appearing before the court
12 because the defendant:

13 (1) Is ill;

14 (2) Is insane; or

15 (3) Is being detained by civil or military authorities,

16 ↪ and the court, upon hearing the matter, determines that one or
17 more of the grounds described in this paragraph exist and that the
18 surety or depositor did not in any way cause or aid the absence of
19 the defendant.

20 **Sec. 4.** NRS 178.514 is hereby amended to read as follows:

21 178.514 1. When a forfeiture has not been set aside, the court
22 shall on motion enter a judgment of default and execution may issue
23 thereon.

24 2. If an order setting aside a forfeiture has not been entered
25 within 180 days after the issuance of the order of forfeiture, the
26 court shall enter judgment by default and commence execution
27 proceedings therein.

28 3. By entering into a bond the obligors submit to the
29 jurisdiction of the court and irrevocably appoint the clerk of the
30 court as their agent upon whom any papers affecting their liability
31 may be served. Their liability may be enforced on motion and such
32 notice of the motion as the court prescribes may be served on the
33 clerk of the court, who shall forthwith mail *or electronically*
34 *transmit* copies to the obligors to their last known addresses **H** *or*
35 *by means that have been designated by the obligors for the*
36 *purpose of receiving electronic transmissions.*

37 **Sec. 5.** Chapter 697 of NRS is hereby amended by adding
38 thereto a new section to read as follows:

39 **1. Except as otherwise provided in subsections 2 and 3, every**
40 **bail agent and insurer authorized to write surety in this State and**
41 **every subsidiary corporation of such an insurer shall maintain a**
42 **means of receiving electronic transmissions and shall receive**
43 **electronic transmissions made pursuant to NRS 178.502, 178.508**
44 **and 178.514.**



- 1 2. *Before April 1, 2018, a bail agent or insurer authorized to*
2 *write surety in this State and every subsidiary corporation of such*
3 *an insurer may elect to receive a notice pursuant to NRS 178.502,*
4 *178.508 or 178.514 by mail by providing a written request to the*
5 *court.*
- 6 3. *On and after April 1, 2018, a bail agent or insurer*
7 *authorized to write surety in this State and every subsidiary*
8 *corporation of such an insurer may receive a notice pursuant to*
9 *NRS 178.502, 178.508 or 178.514 by mail only pursuant to a court*
10 *order issued upon request by the bail agent or insurer for good*
11 *cause shown.*
- 12 4. *As used in this section, "electronic transmission" has the*
13 *meaning ascribed to it in section 1 of this act.*
- 14 **Sec. 6.** (Deleted by amendment.)



