

Amendment No. 39

Assembly Amendment to Assembly Bill No. 38	(BDR 14-399)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date					
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/BAW



Date: 4/7/2017

A.B. No. 38—Revises provisions relating to bail. (BDR 14-399)



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, ~~notice shall be deemed to have been given when the electronic transmission of the notice is successfully initiated.~~ **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 4 also provides that, in the case of electronic transmission, notice shall be deemed to have been given when the electronic transmission of the notice is successfully initiated.~~

Section 5 of this bill requires **, with certain exceptions,** every bail agent ~~, bail enforcement agent, bail solicitor,~~ **and** insurer authorized to write surety in this State and every subsidiary corporation of any such insurer to maintain a means of receiving electronic transmissions and to 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 thereto a new
2 section to read as follows:

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

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

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

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

13 178.502 1. A person required or permitted to give bail shall execute a bond
14 for the person’s appearance. The magistrate or court or judge or justice, having
15 regard to the considerations set forth in NRS 178.498, may require one or more
16 sureties or may authorize the acceptance of cash or bonds or notes of the United
17 States in an amount equal to or less than the face amount of the bond.

18 2. Any bond or undertaking for bail must provide that the bond or
19 undertaking:

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

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

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

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

28 ↪ This subsection does not require that any bond or undertaking extend to
29 proceedings on appeal.

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

33 4. If the action or proceeding against a defendant who has been admitted to
34 bail is dismissed, the bail must not be exonerated until a period of 30 days has
35 elapsed from the entry of the order of dismissal unless the defendant requests that
36 bail be exonerated before the expiration of the 30-day period. If no formal action or
37 proceeding is instituted against a defendant who has been admitted to bail, the bail
38 must not be exonerated until a period of 30 days has elapsed from the day the bond
39 or undertaking is posted unless the defendant requests that bail be exonerated
40 before the expiration of the 30-day period.

41 5. If, within the periods provided in subsection 4, the defendant is charged
42 with a public offense arising out of the same act or omission supporting the charge
43 upon which bail was first given, the prosecuting attorney shall forthwith notify the
44 clerk of the court where the bond was posted, the bail must be applied to the public
45 offense later charged, and the bond or undertaking must be transferred to the clerk
46 of the appropriate court. Within 10 days after its receipt, the clerk of the court to
47 whom the bail is transferred shall mail *or electronically transmit* notice of the
48 transfer to the surety on the bond and the bail agent who executed the bond. ~~In the~~

~~case of electronic transmission, notice shall be deemed to have been given when the electronic transmission of such notice is successfully initiated.~~

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

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

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

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

(b) Not later than ~~45~~ 14 judicial days after the date on which the defendant failed to appear, order the issuance of a warrant for the arrest of the defendant; and

(c) If the undertaking exceeds \$50 or money deposited instead of bail bond exceeds \$500, direct that each surety and the local agent of each surety, or the depositor if the depositor is not the defendant, be given notice that the defendant has failed to appear, by certified mail or electronic transmission receipt of delivery requested, within 20 days after the date on which the defendant failed to appear. The court shall execute an affidavit of such mailing or electronic transmission to be kept as an official public record of the court and shall direct that a copy of the notice be transmitted to the prosecuting attorney at the same time that notice is given to each surety or the depositor. ~~In the case of electronic transmission, notice shall be deemed to have been given when the electronic transmission of such notice is successfully initiated.~~

2. Except as otherwise provided in subsection 3 and NRS 178.509, an order of forfeiture of any undertaking or money deposited instead of bail bond must be prepared by the clerk of the court and signed by the court. An order of forfeiture must include the date on which the forfeiture becomes effective. The undertaking or money deposited instead of bail bond is forfeited 180 days after the date on which the notice is mailed or electronically transmitted pursuant to subsection 1.

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

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

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

(1) Is ill;

(2) Is insane; or

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

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

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

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

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

3. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail or electronically transmit copies to the obligors

1 to their last known addresses ~~†~~ *or by means that have been designated by the*
2 *obligors for the purpose of receiving electronic transmissions.* ~~*In the case of*~~
3 ~~*electronic transmission, notice shall be deemed to have been given when the*~~
4 ~~*electronic transmission of such notice is successfully initiated.*~~

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

7 1. ~~Every~~ *Except as otherwise provided in subsections 2 and 3, every bail*
8 *agent ~~†, bail enforcement agent, bail solicitor,~~ and insurer authorized to write*
9 *surety in this State and every subsidiary corporation of such an insurer shall*
10 *maintain a means of receiving electronic transmissions and shall receive*
11 *electronic transmissions made pursuant to NRS 178.502, 178.508 and 178.514.*

12 2. *Before April 1, 2018, a bail agent or insurer authorized to write surety in*
13 *this State and every subsidiary corporation of such an insurer may elect to*
14 *receive a notice pursuant to NRS 178.502, 178.508 or 178.514 by mail by*
15 *providing a written request to the court.*

16 3. *On and after April 1, 2018, a bail agent or insurer authorized to write*
17 *surety in this State and every subsidiary corporation of such an insurer may*
18 *receive a notice pursuant to NRS 178.502, 178.508 or 178.514 by mail only*
19 *pursuant to a court order issued upon request by the bail agent or insurer for*
20 *good cause shown.*

21 4. *As used in this section, “electronic transmission” has the meaning*
22 *ascribed to it in section 1 of this act.*

23 **Sec. 6.** ~~*This act becomes effective on July 1, 2017.*~~ *(Deleted by*
24 *amendment.)*