



1997 ASSEMBLY BILL 734

January 27, 1998 - Introduced by Representatives GRONEMUS and R. YOUNG.
Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 939.65; and *to create* 968.071 of the statutes; **relating to:**
2 arrest of a person by a surety on a bail bond from another state and providing
3 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a judge may set conditions of release for a person charged with a crime (a defendant) that are designed to ensure the defendant's appearance in court. A judge may require the defendant to execute an appearance bond in a specified amount of money that is either unsecured or secured. If the court requires a secured appearance bond (bail bond), the money must either be posted as a cash deposit or guaranteed by solvent sureties.

In this state, with one exception, a surety for a bail bond must be an individual, not a company or corporation, and the surety may not be compensated for acting as a surety. Under the exception to these restrictions on sureties, any surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed \$200 with respect to any guaranteed arrest bond certificates issued by an automobile club, association or by an insurance company authorized to write automobile liability insurance in this state. Other states allow companies and corporations as well as individuals to act as sureties for bail bonds and to receive compensation for doing so.

Under current law in this state, when a surety desires to be discharged from his or her obligations under a bond, the surety may arrest the person released under the bond and deliver the person to the sheriff of the county in which the action against

the person is pending. In addition, under the common law, a surety may arrest a person who violates the terms of his or her bail bond and surrender the person to the authorities without having to go to court to obtain a warrant or similar court order and without involving law enforcement officials. Generally, a surety has this arrest power even if the person has violated the terms of the bail bond by fleeing to another state; thus, a surety for a person who has violated a bail bond by fleeing to another state could arrest the person in that other state without resort to the courts or law enforcement agencies of that state. However, courts in some states have held that a surety's power to arrest a person who has fled to another state has been superseded by the uniform criminal extradition act, which provides for both: 1) the issuance of a warrant by a court of this state for the arrest of a person alleged to have broken the term of his or her bail and believed to be in this state; and 2) arrest without a warrant upon reasonable information that the person is charged in another state with a felony if, after the person's arrest, he or she is taken before a judge with all practicable speed. While Wisconsin has adopted the uniform extradition act, the courts in this state have not addressed the issue of whether the act supersedes the common law arrest power of a surety from another state.

This bill eliminates the common law right of a surety from another state to arrest a person who has fled to this state by prohibiting a surety from arresting, detaining or removing a person from this state for having broken the terms of a bail bond executed by the person in another state. A surety who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than 10 years or both. Under the bill, a surety must use the uniform criminal extradition act to seek the return of a person who is in this state and who has allegedly violated the terms of a bail bond executed in another state.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 968.071 of the statutes is created to read:
2 **968.071 Arrest by a surety on a bail bond from another state.** (1) No
3 surety on a bail bond undertaken by a principal for release from custody in another
4 state, or no agent of such a surety, may arrest, detain or remove the principal from
5 this state for having broken the terms of the bail bond. This subsection does not
6 prohibit a surety or agent of a surety from acting under s. 976.03 (13) or (14).

