

## SERVICE OF DEFAULT NOTICE TO SURETY

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**Senate Bill 381 as reported from committee w/o amendment**

**Sponsor: Sen. Rick Jones**

**House Committee: Judiciary**

**Senate Committee: Judiciary**

**Complete to 10-23-17**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 174 of 2017)*

**BRIEF SUMMARY:** Senate Bill 381 would amend the Code of Criminal Procedure to revise the manner in which a court must notice a surety if the criminal defendant for whom the bail or surety bond was posted failed to appear.

**FISCAL IMPACT:** Senate Bill 381 would have no fiscal impact on the state, but could result in indeterminate cost reductions for local court systems. Under the bill, courts would be authorized to serve notice of default by electronic mail or by first-class mail, instead of having to serve notice in person or by leaving notice at the last known address. Authorizing service by these additional methods could result in reduced administrative costs for local courts.

### **THE APPARENT PROBLEM:**

A surety is a person who posts bail or a surety bond so a defendant can be released from jail pending trial or sentencing in a criminal case. If a defendant fails to appear in court (referred to as a “default”), the surety may lose the money posted for the bail or surety bond and may be ordered to pay the entire amount of the bond. A court is required to notify a surety within 7 days of the defendant’s failure to appear; the notice must be *delivered directly* to the person or delivered to the surety’s last known address. In addition, a court must also provide notice of an order revoking release and forfeiting bond and a notice of the intent to enter judgment (e.g., require the full bond amount to be paid); court rules require these notices to be *mailed* by the court. Apparently, there have been recent cases in which the notice to the surety regarding the defendant’s failure to appear was mailed instead of being served directly, resulting in the surety’s not being notified of the failure to appear until after the 7-period required by statute had passed.

The Michigan Supreme Court issued two memoranda on January 5, 2017, one alerting trial court judges to a new form to be used when notifying a surety that a defendant failed to appear for a court proceeding and the other setting forth procedures for a court to follow for a variety of notice requirements. Still, some feel that the statute should be updated to avoid confusion in future cases.

### **THE CONTENT OF THE BILL:**

Currently, if a defendant in a criminal case who was released on bond or bail fails to appear before the court when scheduled, the clerk of the court must enter the default on the record. The court is then required to give the surety (the person or company who posted the bond)

notice of the default within 7 days after the date the defendant failed to appear. The notice must be served upon each surety in person or left at the surety's last known business address. Unless good cause is shown as to why the defendant failed to appear, the court is required to enter judgment against the surety for up to the full amount of the bail or surety bond.

The bill would amend the Code of Criminal Procedure to revise the process a court must follow when a defendant fails to appear. The current provision requiring the clerk to enter the default on the record would be deleted, and the bill would change the notice requirements to instead require that if a defendant failed to appear, the court must serve each surety notice within 7 days after the date of the failure to appear.

The bill would expand the required notice methods to include an option for the court to electronically mail the notice to an email address provided to the court by the surety or mail by first-class mail to the surety's last known business address. If the notice were served by first-class mail, the notice would have to be mailed separately from the notice of intent to enter judgment. The bill would take effect 90 days after enactment.

MCL 765.28

***HOUSE COMMITTEE ACTION:***

The committee reported the Senate-passed version without amendment.

***BACKGROUND INFORMATION:***

In a recent court case, a surety was ordered to pay the full obligation of a bond when the defendant failed to appear at a hearing. The surety appealed the order saying that the court failed to provide notice within the 7-day time period. The court had mailed the order by first-class mail on the seventh day, but it wasn't postmarked until the following day (8 days after the defendant failed to appear), and the surety didn't receive it until the next day (9 days after the defendant failed to appear). The court claimed it met the notification requirements because it followed court rules allowing certain orders to be mailed instead of delivered in person. The Court of Appeals ruled in favor of the surety, saying that the court relied on a court rule rather than the statute as required. The court rule pertained to a notice for a hearing to enter judgment on the default (the fact that the defendant did not show up at court), which does allow service by mail, rather than following the statute, which pertained to the notice of the default itself and requires service in person. *In Re Bail Bond Forfeiture*, \_\_ Mich App \_\_ (2006) (No. 328784).

***ARGUMENTS:***

***For:***

The bill would allow a court to notify any surety by email or by first-class mail that a defendant who was released on bail or bond failed to make a scheduled court appearance. The court could still provide service in person by delivering the notice to the surety or

delivering it to the surety's last known address as is currently required. Regardless of the method chosen by the court, the surety would have to be noticed within the 7-day period following the defendant's failure to appear.

The changes proposed by the bill reflect societal changes. Criminal court cases can take a long time from arraignment to sentencing. Thus, a person may be out on bail for weeks, months, or even years. During that time, a surety may have moved and forgotten to update his or her address with the court. This makes direct delivery of the required court notice of default (when the defendant fails to appear in court) more difficult. Since many retain the same email address despite a physical move or leave forwarding addresses at the post office when moving or on an extended vacation, allowing notice to be made by first-class mail or email may enable a surety to obtain the timely notice intended by law. Businesses that act as a surety say the current system just doesn't work and that the changes are needed to effectuate prompt notification.

***POSITIONS:***

A representative of the State Court Administrative Office testified in support of the bill. (10-4-17)

A representative of the Universal Fire & Casualty Insurance Company testified in support of the bill. (10-4-17)

The Michigan Judges Association indicated support for the bill. (10-4 & 10-10-17)

The Michigan Court Administrators Association indicated support for the bill. (10-3-17)

The Michigan Professional Bail Agents Association indicated support for the bill. (10-4-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.