

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1267

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors: Senators Robinson, Odom; Carter, Clodfelter, Harris, Horton, Phillips, Purcell, Warren, and Wellons.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"§ 15A-531. Definitions.

As used in this Article the following definitions apply unless the context clearly requires otherwise:

(1) Bail Bond.— ~~An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.~~

(2) Obligor.— ~~A principal or a surety on a bail bond.~~

~~(3) Principal.— A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety.— One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. `Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) Address of record' means:

- a. For a defendant or an accommodation bondsman, the address entered on the bail bond pursuant to G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.
- b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court pursuant to G.S. 58-71-140,
- c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court pursuant to G.S. 58-71-140,
- d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court pursuant to G.S. 58-71-140.

(3) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(4) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company shall be considered the same as a cash deposit for all purposes in this Article. A bail bond

signed by a professional bondsman who is not a bail agent as defined in subdivision (3) of this section shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(5) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(6) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(7) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(8) 'Surety' means:

- a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.
- b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.
- c. The accommodation bondsman, when a bail bond is "executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"§ 15A-540. Surrender of a principal defendant by a surety; setting new conditions of release.

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A 544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where

the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety pursuant to subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release pursuant to this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required pursuant to a prior release order."

Section 3. G.S. 15A-544 is repealed.

Section 4. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.
Part 1. Bail."

Section 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"§ 15A-544.2. Identifying information on bond.

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

- (1) The name and mailing address of the defendant.
- (2) The name and mailing address of any accommodation bondsman executing the bond as surety.
- (3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

§ 15A-544.3. Entry of provisional judgment.

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final pursuant to G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: `TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other

reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

"§ 15A-544.4. Notice of provisional judgment.

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety and bail agent whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If the bond was executed by a bail agent on behalf of an insurance company, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given pursuant to this section shall be effective when the notice is mailed.

(e) Notice pursuant to this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice pursuant to this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"§ 15A-544.5. Setting aside provisional judgment of forfeiture.

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. The provisions of subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

- (3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.
- (4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. – If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside pursuant to subsection (c) of this section, the only procedure for setting it aside shall be as follows:

- (1) At any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.
- (2) The motion shall be filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.
- (3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.
- (4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the provisional judgment.
- (5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.
- (6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.
- (7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:
 - a. The date of the hearing.
 - b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment maybe considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside pursuant to this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as the court deems appropriate.

"§ 15A-544.6. Final judgment of forfeiture.

A provisional judgment of forfeiture entered pursuant to G.S. 15A-544.3 becomes final judgment of forfeiture without further action by the court and may be enforced pursuant to G.S.15A-544.7, on the one hundred fiftieth day after notice is given pursuant to G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment pursuant to G.S. 15A-544.5 is entered on or before that date.

(2) No motion to set aside the provisional judgment is pending on that date.

"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.

(a) Final Judgment Docketed As Civil Judgment. – When a provisional judgment has become a final judgment pursuant to this Part, the clerk of superior court, pursuant to G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment pursuant to this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. – After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a

surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There shall be no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment pursuant to this section shall be as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as it considers appropriate."

Section 6. G.S. 58-71-25 reads as rewritten:

"§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the~~

~~defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender. Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 7. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 8. There is appropriated to the Judicial Department in the Current Operations and Capital Improvements Appropriations Act for the 2000-2001 fiscal year, the sum of two hundred twenty-five thousand dollars (\$225,000) to be used for temporary personnel, contract programming and training to implement the provisions of this act.

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.