

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

3

SENATE BILL 459
Second Edition Engrossed 5/3/95
House Committee Substitute Favorable 7/19/95

Short Title: Clarify Bail Bond Forfeitures.

(Public)

Sponsors:

Referred to:

March 22, 1995

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT CERTAIN BAIL BONDS SHALL BE TREATED AS A
CASH DEPOSIT AND TO AMEND THE BAIL BOND FORFEITURE
PROCEDURE PROVIDED BY ARTICLE 26 OF CHAPTER 15A OF THE
GENERAL STATUTES.

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 surety-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

1 same as a cash deposit for all purposes in this Article. A bail bond
2 signed by a professional bondsman who is not a surety bondsman, as
3 defined in G.S. 58-71-1, shall not be considered the same as a cash
4 deposit under this Article. Cash bonds set in child support contempt
5 proceedings shall not be satisfied in any manner other than the deposit
6 of cash.

7 (2) Obligor. – A principal or a surety on a bail bond.

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

10 (4) Surety. – One who, with the principal, is liable for the amount of the
11 bail bond upon forfeiture of bail."

12 Sec. 2. G.S. 15A-544(c1) reads as rewritten:

13 "(c1) If the principal does not appear before the court having jurisdiction because the
14 principal is incarcerated in North Carolina and unable to appear before the court, but the
15 surety appears within the time allowed following the date of service and satisfies the
16 court that the principal's appearance on the date set was impossible because the principal
17 ~~was incarcerated,~~ incarcerated in North Carolina, the order of forfeiture must be set aside."

18 Sec. 3. G.S. 15A-544, as rewritten by Section 2 of this act, reads as rewritten:

19 "**§ 15A-544. Forfeiture.**

20 (a) By entering into a bail bond the obligor submits ~~himself~~ to the jurisdiction of
21 the court and irrevocably appoints the clerk as ~~his~~ the obligor's agent for any proceedings
22 with reference to the bond. ~~His~~ The obligor's liability may be enforced on motion without
23 the necessity of an independent action. Each obligor, including the principal, bail agent,
24 and the surety represented by the bail agent, shall enter on the bond the obligor's mailing
25 address, street address, and telephone number for the service of any process required by
26 this section or other provision of law. If the address or telephone number of the obligor
27 changes during the pendency of any proceeding with reference to the bond, it shall be the
28 duty of the obligor to notify the clerk of the obligor's new address and telephone number.

29 (b) If the principal does not comply with the conditions of the bail bond, the court
30 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is
31 ordered by the court, a copy of the order of forfeiture and notice that judgment will be
32 entered upon the order after 60 days must be served on each obligor. Service is to be
33 made by ~~the sheriff by delivery of the order and notice to him or by delivery at his dwelling~~
34 ~~house or place of abode with some person of suitable age and discretion residing therein. If the~~
35 ~~sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or~~
36 ~~place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a~~
37 the clerk mailing by certified mail, return receipt requested, a copy of the order of
38 forfeiture and notice to the each obligor at his address of record each obligor's address as
39 noted on the bond and note on the original the date of mailing. Service is complete three
40 days after the mailing.

41 (c) Except as provided in subsection (c1) of this section, ~~If the principal does not~~
42 ~~appear before the court having jurisdiction at any time within 60 days of following the date~~
43 of service, or on the first day of the next session of court commencing presentment of the

1 ~~forfeiture calendar more than 60 days after the date of service, and satisfy the court that his~~
2 ~~appearance on the date set was impossible or that his failure to appear was without his fault, the~~
3 ~~court must enter judgment for the State against the principal and his sureties for the amount of~~
4 ~~the bail and the costs of the proceedings. the principal or surety may move the court having~~
5 ~~jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall~~
6 ~~the notice of forfeiture. If the principal appears principal or surety appears and moves~~
7 ~~within the time allowed following the date of service and satisfies the court that his~~
8 ~~appearance the principal's failure to appear on the date set was impossible or that his the~~
9 ~~principal's failure to appear was without his the principal's fault, the order of forfeiture~~
10 ~~must be set aside. If the principal appears but is unable to or surety does not satisfy the~~
11 ~~court that his the principal's appearance on the date set was impossible or that his the~~
12 ~~principal's failure to appear was without his fault, but the court determines that justice does~~
13 ~~not require the forfeiture of the full amount of the bond, the court may enter judgment in an~~
14 ~~amount it considers appropriate. the principal's fault, the court must then enter judgment for~~
15 ~~the State against the principal and surety for the amount of the bail and the cost of the~~
16 ~~proceeding.~~

17 (c1) If the principal does not appear before the court having jurisdiction because the
18 principal is incarcerated in North Carolina and unable to appear before the court, but the
19 surety appears within the time allowed following the date of service and satisfies the
20 court that the principal's appearance on the date set was impossible because the principal
21 was incarcerated in North Carolina, the order of forfeiture must be set aside.

22 (d) To facilitate the procedure under this section, the clerk in each county shall
23 prepare for both the district and superior court a forfeiture calendar once each month
24 when court is in session. The forfeiture calendar shall list the names of all principals and
25 sureties to whom forfeiture has been ordered more than 60 days previously in the county
26 and as to which judgments of forfeiture against the principal and surety have not been
27 entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show
28 the amount of the bond ordered forfeited in each case. In addition, the clerk shall place
29 on the forfeiture calendar for hearing all written motions to strike an order of forfeiture
30 filed since the previous forfeiture calendar. It shall be the duty of the district attorney to
31 present the forfeiture calendar to the court, but the attorney for the county school board
32 shall have the right to appear and be heard when the forfeiture calendar is presented. At
33 the district attorney's discretion, the district attorney may appoint the county school board
34 attorney as the district attorney's designee for the presentation of the forfeiture calendar.

35 (e) At any time within 90 days after entry of the judgment against a principal or
36 ~~his surety, or on the first day of the next session of court commencing more than 90 days~~
37 ~~after the entry of the judgment, the court may direct the principal or surety, by verified~~
38 ~~written petition, may request that the judgment be remitted in whole or in part, upon such~~
39 ~~conditions as the court may impose, if it appears that justice requires the remission of part~~
40 ~~or all of the judgment. A copy of the petition must be served upon the attorney for the~~
41 ~~county school board at least three working days prior to the hearing. The clerk shall~~
42 ~~place on the forfeiture calendar for hearing all petitions that have been filed during the~~
43 ~~previous month or since the last forfeiture calendar. The petitioner, the district attorney,~~

1 and the school board attorney shall be notified of the date, time, and place of the hearing.
2 The petitioner, the district attorney, and the county school board attorney shall be given
3 an opportunity to appear and be heard. If the principal is surrendered by the surety and
4 incarcerated in the State within 90 days of the entry of the judgment, the forfeiture shall
5 be stricken upon the payment of costs. If the principal is incarcerated or served an order
6 for arrest in North Carolina within 90 days of the entry of the judgment and the principal
7 placed on a new bond or released by the court, then the forfeiture shall be stricken upon
8 the payment of costs.

9 (f) If a judgment has not been remitted within the period provided in subsection
10 (e) above, the clerk must issue execution on the judgment within 30 days, and remit the
11 clear proceeds to the county for use in maintaining free public schools. Any clerk who
12 fails to perform his duty as required in this subsection is subject to a penalty of five
13 hundred dollars (\$500.00).

14 (g) If a ~~return~~-levy of execution upon a judgment against an obligor remains
15 unsatisfied for 10 days, the ~~obligor may~~-sheriff shall notify the clerks and magistrates in
16 each county in the prosecutorial district and the obligor shall not become surety on any
17 bail bond in the prosecutorial district so long as the judgment remains unsatisfied.
18 Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter
19 58 of the General Statutes.

20 (h) For extraordinary cause shown, the court which has entered judgment upon a
21 forfeiture of a bond may, after execution, remit the judgment in whole or in part and
22 order the clerk to refund such amounts as the court considers appropriate. Any person
23 moving for remission of judgment must do so by verified petition, and a copy of the
24 petition must be served upon the attorney for the county school board at least three
25 working days prior to the hearing on the motion. The moving party must notify the
26 attorney for the school board of the time and place of the hearing, and such attorney, if he
27 so desires, must be given an opportunity to appear and be heard. If money has been paid
28 to the county pursuant to execution on a judgment of forfeiture, it must refund to the
29 person entitled the amount of any remission granted under the terms of this subsection
30 upon receipt of a certified copy of the judgment of remission from the clerk."

31 Sec. 4. Sections 1 and 2 of this act are effective upon ratification. Section 3 of
32 this act becomes effective December 1, 1995.