

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1607\*  
Committee Substitute Favorable 6/28/00

Short Title: Modernize Bail Bond Forfeitures.

(Public)

Sponsors:

Referred to:

May 18, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS  
3 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL  
4 BOND LAWS COMMITTEE.

5 The General Assembly of North Carolina enacts:

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

7 **"§ 15A-531. Definitions.**

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

10 (1) ~~Bail Bond. An undertaking by the principal to appear in court as~~  
11 ~~required upon penalty of forfeiting bail to the State of North Carolina in~~  
12 ~~a stated amount. Bail bonds include an unsecured appearance bond, an~~  
13 ~~appearance bond secured by a cash deposit of the full amount of the~~  
14 ~~bond, an appearance bond secured by a mortgage pursuant to G.S. 58-~~  
15 ~~74-5, and an appearance bond secured by at least one solvent surety. A~~  
16 ~~bail bond for which the surety is a surety bondsman, as defined in G.S.~~  
17 ~~58-71-1, acting on behalf of an insurer shall be considered the same as a~~  
18 ~~cash deposit for all purposes in this Article. A bail bond signed by a~~  
19 ~~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.

(1a) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond under 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 under 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 under 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 under G.S. 58-71-140.

(1b) '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.

1           (1c) 'Bail bond' means an undertaking by the defendant to appear in court as  
2 required upon penalty of forfeiting bail to the State in a stated amount.  
3 Bail bonds include an unsecured appearance bond, an appearance bond  
4 secured by a cash deposit of the full amount of the bond, an appearance  
5 bond secured by a mortgage under G.S. 58-74-5, and an appearance  
6 bond secured by at least one solvent surety. A bail bond for which the  
7 surety is a bail agent acting on behalf of an insurance company is  
8 considered the same as a cash deposit for all purposes in this Article. A  
9 bail bond signed by a professional bondsman who is not a bail agent is  
10 not considered the same as a cash deposit under this Article. Cash  
11 bonds set in child support contempt proceedings shall not be satisfied in  
12 any manner other than the deposit of cash.

13           (1d) 'Defendant' means a person obligated to appear in court as required  
14 upon penalty of forfeiting bail under a bail bond.

15           (1e) 'Insurance company' means any domestic, foreign, or alien surety  
16 company which has qualified under Chapter 58 of the General Statutes  
17 generally to transact surety business and specifically to transact bail  
18 bond business in this State.

19           (1f) 'Professional bondsman' means any person who is approved and  
20 licensed by the Commissioner of Insurance under Article 71 of Chapter  
21 58 of the General Statutes and who pledges cash or approved securities  
22 with the Commissioner as security for bail bonds written in connection  
23 with a judicial proceeding and receives or is promised money or other  
24 things of value therefor.

25           (4) 'Surety' means:

- 26           a. The insurance company, when a bail bond is executed by a bail  
27 agent on behalf of an insurance company.  
28           b. The professional bondsman, when a bail bond is executed by a  
29 professional bondsman or by a runner on behalf of a professional  
30 bondsman.  
31           c. The accommodation bondsman, when a bail bond is executed by  
32 an accommodation bondsman."

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

34 **"§ 15A-540. Surrender of a ~~principal-defendant~~ by a surety; setting new conditions**  
35 **of release.**

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

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

3 (a) Going Off the Bond Before Breach. – Before there has been a breach of the  
4 conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-  
5 71-20. Upon application by the surety after such surrender, the clerk must exonerate the  
6 surety from the bond.

7 (b) Surrender After Breach of Condition. – After there has been a breach of the  
8 conditions of a bail bond, a surety may surrender the defendant as provided in this  
9 subsection. A surety may arrest the defendant for the purpose of returning the defendant  
10 to the sheriff. After arresting a defendant, the surety may surrender the defendant to the  
11 sheriff of the county in which the defendant is bonded to appear or to the sheriff where  
12 the defendant was bonded. Alternatively, a surety may surrender a defendant who is  
13 already in the custody of any sheriff by appearing in person and informing the sheriff that  
14 the surety wishes to surrender the defendant. Before surrendering a defendant to a  
15 sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon  
16 surrender of the defendant, the sheriff shall provide a receipt to the surety.

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

31 Section 3. G.S. 15A-543(a) reads as rewritten:

32 "(a) In addition to forfeiture imposed under ~~G.S. 15A-544~~, Part 2 of this Article, any  
33 person released pursuant to this Article who willfully fails to appear before any court or  
34 judicial official as required is subject to the criminal penalties set out in this section."

35 Section 4. G.S. 15A-544 is repealed.

36 Section 5. The heading for Article 26 of Chapter 15A of the General Statutes  
37 reads as rewritten:

38 **"ARTICLE 26.**

39 **BAIL.**

40 **PART 1. GENERAL PROVISIONS.**"

41 Section 6. Article 26 of Chapter 15A of the General Statutes is amended by  
42 adding a new Part 2 to read:

43 **"PART 2. BAIL BOND FORFEITURE.**

1 **"§ 15A-544.1. Forfeiture jurisdiction.**

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

6 **"§ 15A-544.2. Identifying information on bond.**

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

9 (1) The name and mailing address of the defendant.

10 (2) The name and mailing address of any accommodation bondsman  
11 executing the bond as surety.

12 (3) The name and license number of any professional bondsman executing  
13 the bond as surety and the name and license number of the runner  
14 executing the bail bond on behalf of the professional bondsman.

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

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

21 **"§ 15A-544.3. Entry of forfeiture.**

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

26 (b) The forfeiture shall contain the following information:

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

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

30 (3) The amount of the bail bond.

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

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

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

36 (7) The date on which the forfeiture is entered.

37 (8) The date on which the forfeiture will become a final judgment under  
38 G.S. 15A-544.6 if not set aside before that date.

39 (9) The following notice: 'TO THE DEFENDANT AND EACH SURETY  
40 NAMED ABOVE: The defendant named above has failed to appear as  
41 required before the court in the case identified above. A forfeiture for  
42 the amount of the bail bond shown above was entered in favor of the  
43 State against the defendant and each surety named above on the date of

1 forfeiture shown above. This forfeiture will be set aside if, on or before  
2 the final judgment date shown above, satisfactory evidence is presented  
3 to the court that one of the following events has occurred: (i) the  
4 defendant's failure to appear has been stricken by the court in which the  
5 defendant was required to appear and any order for arrest that was  
6 issued for that failure to appear is recalled, (ii) all charges for which the  
7 defendant was bonded to appear have been finally disposed by the court  
8 other than by the State's taking a voluntary dismissal with leave, (iii) the  
9 defendant has been surrendered by a surety or bail agent to a sheriff of  
10 this State as provided by law, (iv) the defendant has been served with an  
11 Order for Arrest for the Failure to Appear on the criminal charge in the  
12 case in question, (v) the defendant died before or within the period  
13 between the forfeiture and the final judgment as demonstrated by the  
14 presentation of a death certificate, or (vi) the defendant was incarcerated  
15 in a unit of the Department of Correction and is serving a sentence or in  
16 a unit of the Federal Bureau of Prisons located within the borders of the  
17 State at the time of the failure to appear. The forfeiture will not be set  
18 aside for any other reason. If this forfeiture is not set aside on or before  
19 the final judgment date shown above, and if no motion to set it aside is  
20 pending on that date, the forfeiture will become a final judgment on that  
21 date. The final judgment will be enforceable by execution against the  
22 defendant and any accommodation bondsman and professional  
23 bondsman on the bond. The final judgment will also be reported to the  
24 Department of Insurance. Further, no surety will be allowed to execute  
25 any bail bond in the above county until the final judgment is satisfied in  
26 full.'

27 **"§ 15A-544.4. Notice of forfeiture.**

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

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

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

35 (d) Notice given under this section is effective when the notice is mailed.

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

40 **"§ 15A-544.5. Setting aside forfeiture.**

41 (a) Relief Exclusive. – There shall be no relief from a forfeiture except as  
42 provided in this section. The reasons for relief are those specified in subsection (b) of  
43 this section. The procedures for obtaining relief are those specified in subsections (c) and

1 (d) of this section. Subsections (f), (g), (h), and (i) of this section apply regardless of the  
2 reason for relief given or the procedure followed.

3 (b) Reasons for Set Aside. – A forfeiture shall be set aside for any one of the  
4 following reasons, and none other:

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

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

13 (3) The defendant has been surrendered by a surety on the bail bond as  
14 provided by G.S. 15A-540, as evidenced by the sheriff's receipt  
15 provided for in that section.

16 (4) The defendant has been served with an Order for Arrest for the Failure  
17 to Appear on the criminal charge in the case in question.

18 (5) The defendant died before or within the period between the forfeiture  
19 and the final judgment as demonstrated by the presentation of a death  
20 certificate.

21 (6) The defendant was incarcerated in a unit of the Department of  
22 Correction and is serving a sentence or in a unit of the Federal Bureau  
23 of Prisons located within the borders of the State at the time of the  
24 failure to appear.

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

32 (d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this  
33 section, the only procedure for setting it aside is as follows:

34 (1) At any time before the expiration of 150 days after the date on which  
35 notice was given under G.S. 15A-544.4, the defendant or any surety on  
36 a bail bond may make a written motion that the forfeiture be set aside,  
37 stating the reason and attaching the evidence specified in subsection (a)  
38 of this section.

39 (2) The motion is filed in the office of the clerk of superior court of the  
40 county in which the forfeiture was entered, and a copy is served, under  
41 G.S. 1A-1, Rule 5, on the district attorney for that county and the county  
42 board of education.

1           (3) Either the district attorney or the county board of education may object  
2 to the motion by filing a written objection in the office of the clerk and  
3 -serving a copy on the moving party.

4           (4) If neither the district attorney nor the board of education has filed a  
5 written objection to the motion by the tenth day after the motion is  
6 served, the clerk shall enter an order setting aside the forfeiture.

7           (5) If either the district attorney or the county board of education files a  
8 written objection to the motion, then not more than 30 days after the  
9 objection is filed a hearing on the motion and objection shall be held in  
10 the county, in the trial division in which the defendant was bonded to  
11 appear.

12           (6) If at the hearing the court allows the motion, the court shall enter an  
13 order setting aside the forfeiture.

14           (7) If at the hearing the court does not enter an order setting aside the  
15 forfeiture, the forfeiture shall become a final judgment of forfeiture on  
16 the later of:

17           a. The date of the hearing.

18           b. The date of final judgment specified in G.S. 15A-544.6.

19           (e) Only One Motion Per Forfeiture. – No more than one motion to set aside a  
20 specific forfeiture may be considered by the court.

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

25           (g) No Final Judgment After Forfeiture Is Set Aside. – If a forfeiture is set aside  
26 under this section, the forfeiture shall not thereafter ever become a final judgment of  
27 forfeiture or be enforced or reported to the Department of Insurance.

28           (h) Appeal. – An order on a motion to set aside a forfeiture is a final order or  
29 judgment of the trial court for purposes of appeal. Appeal is the same as provided for  
30 appeals in civil actions. When notice of appeal is properly filed, the court may stay the  
31 effectiveness of the order on any conditions the court considers appropriate.

32 **"§ 15A-544.6. Final judgment of forfeiture.**

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

36           (1) No order setting aside the forfeiture under G.S. 15A-544.5 is entered on  
37 or before that date; and

38           (2) No motion to set aside the forfeiture is pending on that date.

39 **"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.**

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



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

4       **(c) Execution; Copy to Commissioner of Insurance.** – After docketing a final  
5 judgment under this section, the clerk shall:

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

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

13       **(d) Sureties May Not Execute Bonds in County.** – After a final judgment is  
14 docketed as provided in this section, no surety named in the judgment shall become a  
15 surety on any bail bond in the county in which the judgment is docketed until the  
16 judgment is satisfied in full.

17 **"§ 15A-544.8. Relief from final judgment of forfeiture.**

18       **(a) Relief Exclusive.** – There is no relief from a final judgment of forfeiture  
19 except as provided in this section.

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

22           **(1)** The person seeking relief was not given notice as provided in G.S. 15A-  
23 544.4.

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

26       **(c) Procedure.** – The procedure for obtaining relief from a final judgment under  
27 this section is as follows:

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

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

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

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

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

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

4 (f) Appeal. – An order on a motion for relief from a final judgment of forfeiture is  
5 a final order or judgment of the trial court for purposes of appeal. Appeal is the same as  
6 provided for appeals in civil actions. When notice of appeal is properly filed, the court  
7 may stay the effectiveness of the order on any conditions it considers appropriate."

8 Section 7. G.S. 58-71-25 reads as rewritten:

9 "**~~§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.~~**  
10 **surrender.**

11 ~~The person desiring to make a surrender of the defendant shall procure a certified~~  
12 ~~copy of the undertakings and deliver them together with the defendant to the official in~~  
13 ~~whose custody the defendant was at the time bail was taken, or to the official into whose~~  
14 ~~custody he would have been given had he been committed, who shall detain the~~  
15 ~~defendant in his custody thereon, as upon a commitment, and by a certificate in writing~~  
16 ~~acknowledge the surrender.~~

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

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

27 Section 8. G.S. 24-5(a1) reads as rewritten:

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

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