

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 851

Committee Substitute Favorable 5/9/95

Senate Judiciary II/Election Laws Committee Substitute Adopted 6/7/95

Short Title: Bail Bond Forfeitures.

(Public)

Sponsors:

Referred to:

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO CHANGE SOME PROCEDURES WITH REGARD TO SURETY BONDS.

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 bond shall be considered the same as a cash deposit for all purposes in this Article.
- (2) Obligor. – A principal or a surety on a bail bond.

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

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

5 Sec. 2. G.S. 15A-540(a) reads as rewritten:

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

13 Sec. 3. G.S. 15A-544 reads as rewritten:

14 "**§ 15A-544. Forfeiture.**

15 (a) By entering into a bail bond the obligor submits himself to the jurisdiction of
16 the court and irrevocably appoints the clerk as his agent for any proceedings with
17 reference to the bond. His liability may be enforced on motion without the necessity of an
18 independent action.

19 (b) If the principal does not comply with the conditions of the bail bond, the court
20 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is
21 ordered by the court, a copy of the order of forfeiture and notice that judgment will be
22 entered upon the order after 60 days must be served on each obligor. Service is to be
23 made by the sheriff by delivery of the order and notice to him or by delivery at his
24 dwelling house or place of abode with some person of suitable age and discretion residing
25 therein. If the sheriff is unable to effect service because an obligor cannot be found or has
26 no dwelling house or place of abode known to the sheriff, he must file a return to this
27 effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor
28 at his address of record and note on the original the date of mailing. Service is complete
29 three days after the mailing.

30 (c) ~~If~~ Except as provided in subsection (c1) of this section, if the principal does not
31 appear before the court having jurisdiction within 60 days of the date of service, or on the
32 first day of the next session of court commencing more than 60 days after the date of
33 service, and satisfy the court that his appearance on the date set was impossible or that his
34 failure to appear was without his fault, the court must enter judgment for the State against
35 the principal and his sureties for the amount of the bail and the costs of the proceedings.
36 If the principal appears within the time allowed following the date of service and satisfies
37 the court that his appearance on the date set was impossible or that his failure to appear
38 was without his fault, the order of forfeiture must be set aside. If the principal appears but
39 is unable to satisfy the court that his appearance on the date set was impossible or that his
40 failure to appear was without his fault, but the court determines that justice does not
41 require the forfeiture of the full amount of the bond, the court may enter judgment in an
42 amount it considers appropriate.

1 (c1) If the principal does not appear before the court having jurisdiction because the
2 principal is incarcerated and unable to appear before the court, but the surety appears
3 within the time allowed following the date of service and satisfies the court that the
4 principal's appearance on the date set was impossible because the principal was
5 incarcerated, the order of forfeiture must be set aside.

6 (d) To facilitate the procedure under this section, the clerk in each county must
7 present a forfeiture roll at the first session of superior court commencing more than 60
8 days after the entry of any order of forfeiture in either the district or superior court. The
9 forfeiture roll must list the names of all principals as to which forfeiture has been ordered
10 in the county in the past three years and as to which judgments of forfeiture against
11 obligors have not been entered or, if entered, not yet satisfied by execution. In addition,
12 the forfeiture roll must show the amount of the bond ordered forfeited in each case and
13 the names of all sureties liable on each bond.

14 (e) At any time within 90 days after entry of the judgment against a principal or
15 his surety, or on the first day of the next session of court commencing more than 90 days
16 after the entry of the judgment, the court may direct that the judgment be remitted in
17 whole or in part, upon such conditions as the court may impose, if it appears that justice
18 requires the remission of part or all of the judgment. If the principal is incarcerated or
19 served an order for arrest in North Carolina within 90 days of the entry of the judgment
20 and the principal placed on a new bond or released by the court, then the forfeiture shall
21 be stricken upon the payment of costs. If the principal is incarcerated or served an order
22 for arrest and the principal placed on a new bond or released by the court anytime
23 between failure to appear and up to 90 days after the entry of judgment, then the bond
24 shall be totally remitted upon the payment of costs.

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

30 (g) If a return of execution upon a judgment against an obligor remains unsatisfied
31 for 10 days, the obligor may not become surety on any bail bond in the prosecutorial
32 district so long as the judgment remains unsatisfied. Nothing in this subsection makes
33 lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

34 (h) For extraordinary cause shown, the court which has entered judgment upon a
35 forfeiture of a bond may, after execution, remit the judgment in whole or in part and
36 order the clerk to refund such amounts as the court considers appropriate. Any person
37 moving for remission of judgment must do so by verified petition, and a copy of the
38 petition must be served upon the attorney for the county school board at least three
39 working days prior to the hearing on the motion. The moving party must notify the
40 attorney for the school board of the time and place of the hearing, and such attorney, if he
41 so desires, must be given an opportunity to appear and be heard. If money has been paid
42 to the county pursuant to execution on a judgment of forfeiture, it must refund to the

1 person entitled the amount of any remission granted under the terms of this subsection
2 upon receipt of a certified copy of the judgment of remission from the clerk."

3 Sec. 4. Article 26 of Chapter 15A of the General Statutes is amended by
4 adding a new section to read:

5 "**§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate**
6 **punishment.**

7 If a defendant is convicted and sentenced to community punishment or intermediate
8 punishment and no appeal is pending, then the court shall remit the bail bond to the
9 obligor in accordance with the provisions of this Article and shall not require that the bail
10 bond continue to be posted while the defendant serves his or her sentence."

11 Sec. 5. This act is effective upon ratification.