

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65223-LH-115 (03/09)

Short Title: Bail Bonds/Forfeitures & Remittances. (Public)

Sponsors: Senator Thomas.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FORFEITURE OF A BAIL BOND SHALL BE SET ASIDE IF THE DEFENDANT FOR WHOM THE BOND WAS POSTED WAS INCARCERATED ANYWHERE AT THE TIME OF THE FAILURE TO APPEAR, TO PROVIDE THAT BOND SHALL NOT BE FORFEITED UNLESS THE SURETY OR BAIL AGENT HAD ACTUAL KNOWLEDGE THAT THE DEFENDANT HAD FAILED TO APPEAR ON TWO OR MORE OCCASIONS ON THE SAME CHARGE, AND TO PROVIDE THAT BOND SHALL BE REMITTED IF THE DEFENDANT RECEIVES A PRAYER FOR JUDGMENT CONTINUED OR DEFERRED PROSECUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5 reads as rewritten:

"§ 15A-544.5. Setting aside forfeiture.

(a) Relief Exclusive. – There shall be no relief from a forfeiture 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. 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 forfeiture 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

1 with leave, as evidenced by a copy of an official court record,
2 including an electronic record.

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

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

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

11 (6) The defendant was incarcerated ~~in a unit of the Department of~~
12 ~~Correction and is serving a sentence or in a unit of the Federal Bureau~~
13 ~~of Prisons located within the borders of the State~~anywhere at the time
14 of the failure to appear.

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

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

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

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

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

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

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

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

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

6 a. The date of the hearing.

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

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

10 (f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in
11 which the State proves that the surety or the bail agent had ~~notice or~~ actual knowledge,
12 before executing a bail bond, that the defendant had already failed to appear on two or
13 more prior ~~occasions,~~ occasions on the same charge, no forfeiture of that bond may be
14 set aside for any reason. Actual knowledge exists only when the State indicates on both
15 the release order and the bond form provided by the State that the defendant has failed
16 to appear on two or more occasions on the same charge.

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

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

24 **SECTION 2.** G.S. 15A-547.1 reads as rewritten:

25 "**§ 15A-547.1. Remit bail bond if ~~defendant sentenced to community or~~**
26 **intermediate punishment in certain circumstances.**

27 ~~If a defendant is convicted and sentenced to community punishment or intermediate~~
28 ~~punishment and no appeal is pending, then the~~ The court shall remit the bail bond to the
29 obligor in accordance with the provisions of this Article and shall not require that the
30 bail bond continue to be posted while the defendant serves his or her ~~sentenee.~~ sentence
31 if any of the following circumstances exist:

32 (1) The defendant is convicted and sentenced to community punishment or
33 intermediate punishment, and no appeal is pending.

34 (2) The defendant receives a prayer for judgment continued.

35 (3) The disposition of the defendant's case is by deferred prosecution."

36 **SECTION 3.** This act becomes effective December 1, 2005, and applies to
37 bail bonds posted for offenses committed on or after that date.