

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 929
Judiciary II Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 7/2/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S929-PCS55476-RD-74

Short Title: No Set Aside of Bond Forfeit/Actual Notice.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND REQUIREMENTS APPLICABLE TO MOTIONS TO SET ASIDE BAIL BOND FORFEITURES AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH SUCH MOTIONS; AND TO PROVIDE THAT A COURT MAY NOT SET ASIDE A BAIL BOND FORFEITURE IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

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

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

...

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

...

(8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. Sanctions awarded under this subdivision shall be docketed



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1 by the clerk of superior court as a civil judgment as provided in G.S. 1-234.
2 The clerk of superior court shall remit the clear proceeds of the sanction to
3 the county finance officer as provided in G.S. 115C-452. This subdivision
4 shall not limit the criminal prosecution of any individual involved in the
5 creation or filing of any fraudulent documentation."

6 **SECTION 1.1.** ~~The introductory language of G.S. 15A-544.5(b) reads as rewritten:~~

7 "(b) Reasons for Set Aside. – ~~A~~ Except as provided by subsection (f) of this section, a
8 forfeiture shall be set aside for any one of the following reasons, and none other.

9"

10 **SECTION 2.** G.S. 15A-544.5(f) reads as rewritten:

11 "(f) ~~No More Than Two Forfeitures May Be Set Aside Prohibited in Certain~~
12 ~~Circumstances. Per Case.~~ No forfeiture of a bond may be set aside for any reason ~~in~~ in any
13 case in which the State proves that the surety or the bail agent had actual notice or actual
14 knowledge, before executing a bail bond, bond that the defendant had already failed to appear
15 on two or more prior occasions in the case for which the bond was executed. Actual notice as
16 required by this subsection shall only occur if two or more failures to appear are indicated on
17 the defendant's release order by a judicial official. The judicial official shall indicate on the
18 release order when it is the defendant's second or subsequent failure to appear in the case for
19 which the bond was executed, occasions, no forfeiture of that bond may be set aside for any
20 reason."

21 **SECTION 3.** Section 1 of this act becomes effective January 1, 2010, and applies
22 to all motions to set aside filed on or after that date. Section 1.1 and Section 2 of this act
23 become effective January 1, 2010, and apply to bail bonds executed on or after that date.