

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 649
Committee Substitute Favorable 5/16/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H649-PCS30389-RV-30

Short Title: Amend Grounds/License Revocat'n/Bail Bondsman.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS PERTAINING TO GROUNDS FOR REVOCATION OF
3 LICENSURE UNDER THE LAWS REGULATING BAIL BONDSMEN AND
4 ALLOWING A BAIL AGENT ACTING ON BEHALF OF A SURETY COMPANY TO
5 MAKE WRITTEN MOTIONS REGARDING SETTING ASIDE BAIL FORFEITURE
6 AND RELIEF FROM FINAL JUDGMENT OF BAIL FORFEITURE UNDER THE
7 LAWS PERTAINING TO CRIMINAL PROCEDURE.

8 Whereas, the North Carolina Court of Appeals held recently in its unpublished
9 opinion in State v. Cortez, COA10-474, that G.S. 15A-544.5(d)(1) constitutes a jurisdictional
10 limitation on the clerk's authority to grant motions to set aside bond forfeitures under
11 G.S. 15A-544.5(d)(4); and

12 Whereas, contrary to the Court's reasoned interpretation of G.S. 15A-544.5(d), it
13 was not the intent of the General Assembly in S.L. 2000-133 that the description of the content
14 of motions to set aside in G.S. 15A-544.5(d)(1) would constitute a jurisdictional limitation on
15 the clerk's authority to grant such motions; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** Article 71 of Chapter 58 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 58-71-16. No return of premium; bond reduction.**

20 Notwithstanding any other provision of law or rules adopted by the Commissioner under
21 this Article, if, after an agreement has been entered into between a defendant and a surety, the
22 defendant's bond is reduced, the surety shall not be required to return any portion of the
23 premium to the defendant."

24 **SECTION 2.** G.S. 58-71-80 reads as rewritten:

25 **"§ 58-71-80. Grounds for denial, suspension, ~~revocation or refusal to renew~~**
26 **licenses, probation, revocation, or nonrenewal of licenses.**

27 (a) The Commissioner may deny, place on probation, suspend, revoke, or refuse to
28 renew any license issued under this Article ~~Article~~, in accordance with the provisions of Article
29 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

30 ...

31 (5) ~~Fraudulent~~ Fraudulent, coercive, or dishonest practices in the conduct of
32 business under the license or demonstrating incompetence.



1 untrustworthiness, or financial irresponsibility in the conduct of business in
 2 this State or any other jurisdiction.

3 (6) Conviction of a crime involving dishonesty, breach of trust, or moral
 4 turpitude.

5 (7) Failure to comply with or violation of the provisions of this Article or of any
 6 order, subpoena, rule or regulation of the ~~Commissioner~~ Commissioner or
 7 person with similar regulatory authority in another jurisdiction.

8 ...
 9 (14a) Having any professional license denied, suspended, or revoked in this State
 10 or any other jurisdiction for causes substantially similar to those listed in this
 11 subsection.

12 (14b) Violation of (i) any law governing bail bonding or insurance in this State or
 13 any other jurisdiction or (ii) any rule of the Financial Industry Regulatory
 14 Authority (FINRA).

15 (14c) Failure to comply with an administrative order or court order imposing a
 16 child support obligation after entry of a final judgment or order finding the
 17 violation to have been willful.

18 (14d) Failure to pay State income tax or comply with any administrative or court
 19 order directing payment of State income tax after entry of a final judgment
 20 or order finding the violation to have been willful.

21 (14e) Forging another's name to any document related to a bail bond transaction.

22 "...."

23 **SECTION 3.** G.S. 58-71-82 reads as rewritten:

24 "**§ 58-71-82. Dual license holding.**

25 If an individual holds a professional bondsman's license or a runner's license and a surety
 26 bondsman's license simultaneously, they are considered one license for the purpose of
 27 disciplinary actions involving suspension, revocation, or nonrenewal under this Article.
 28 Separate renewal fees must be paid for each license, however. Nothing in this Article shall be
 29 construed to prohibit a person from simultaneously holding a professional bondsman's license
 30 and a runner's license."

31 **SECTION 4.** G.S. 58-71-115 is amended by adding a new subsection to read:

32 "(c) Notwithstanding any other provision of this Article, any documents, materials, or
 33 other information in the control or possession of the Commissioner or any organization of
 34 which the Commissioner is a member and (i) furnished by an insurer or an employee or agent
 35 thereof acting on behalf of the insurer under this section or (ii) obtained by the Commissioner
 36 in an investigation under this section shall be confidential by law and privileged, shall not be
 37 considered public records under G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not
 38 be subject to subpoena, and shall not be subject to discovery in any civil action other than a
 39 proceeding brought by the Commissioner against a person to whom the documents, materials,
 40 or other information relate. However, the Commissioner may use the documents, materials, or
 41 other information in the furtherance of any regulatory or legal action brought as a part of the
 42 Commissioner's duties. Neither the Commissioner nor any person who receives documents,
 43 materials, or other information while acting under the authority of the Commissioner shall be
 44 permitted or required to testify in any civil action other than a proceeding brought by the
 45 Commissioner against a person to whom the documents, materials, or other information relate."

46 **SECTION 5.** Article 71 of Chapter 58 of the General Statutes is amended by
 47 adding a new section to read:

48 "**§ 58-71-122. Transfer of business by bail bondsman.**

49 A licensed professional bondsman may contract to transfer, convey, or assign the
 50 professional bondsman's business to another professional bondsman licensed under this Article.
 51 The contract shall include a list of the transferring professional bondsman's pending

1 outstanding bail bond obligations and shall be filed with the Commissioner. The contract shall
2 allow for the transferring professional bondsman to transfer, convey, or assign assets to the
3 purchasing professional bondsman that include, but are not limited to, any pledged cash or any
4 pledged approved securities with the Commissioner as security for bail bonds. Notwithstanding
5 the filing of the contract with the Commissioner, the transferor remains responsible for all
6 outstanding bond obligations until relieved from an individual obligation pursuant to
7 G.S. 15A-534(h), by a substitution of surety pursuant to G.S. 15A-538, or satisfaction of any
8 final judgment of forfeiture entered thereon."

9 **SECTION 6.** G.S. 15A-544.5(d)(1) reads as rewritten:

10 "(1) At any time before the expiration of 150 days after the date on which notice
11 was given under G.S. 15A-544.4, ~~the defendant or any surety~~ any of the
12 following parties on a bail bond may make a written motion that the
13 forfeiture be set aside, ~~stating the reason and attaching the evidence specified~~
14 ~~in subsection (b) of this section.~~ aside:

15 a. The defendant.

16 b. Any surety.

17 c. A professional bondsman or a runner acting on behalf of a
18 professional bondsman.

19 d. A bail agent acting on behalf of an insurance company.

20 The written motion shall state the reason for the motion and attach to the
21 motion the evidence specified in subsection (b) of this section."

22 **SECTION 7.** G.S. 15A-544.5(d)(4) reads as rewritten:

23 "(4) If neither the district attorney nor the board of education has filed a written
24 objection to the motion by the twentieth day after the motion is served, the
25 clerk shall enter an order setting aside the ~~forfeiture.~~ forfeiture, regardless of
26 the basis for relief asserted in the motion, the evidence attached, or the
27 absence of either."

28 **SECTION 8.** G.S. 15A-544.8(c)(1) reads as rewritten:

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

34 a. The defendant.

35 b. Any surety.

36 c. A professional bondsman or a runner acting on behalf of a
37 professional bondsman.

38 d. A bail agent acting on behalf of an insurance company.

39 The written motion shall state the reasons for the motion and set forth the
40 evidence in support of each reason."

41 **SECTION 9.** Sections 6 and 8 of this act become effective December 1, 2011. The
42 remainder of this act is effective when it becomes law.