

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 994

Short Title: Amend Bail Bond Laws.

(Public)

Sponsors: Senators Odom and Ballantine.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A TEMPORARY LICENSE AS A PROFESSIONAL BONDSMAN OR SURETY BONDSMAN, TO CREATE THREE NEW CRIMINAL OFFENSES OF BAIL-JUMPING, TO INCREASE THE AMOUNT OF THE SECURITY DEPOSIT THAT A BONDSMAN MUST POST WITH THE COMMISSIONER OF INSURANCE, AND TO AMEND CERTAIN LAWS REGARDING PRETRIAL RELEASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-71-1 is amended by adding a new subdivision to read:

"(12) 'Temporary licensee' means a person employed by a professional bondsman, surety bondsman, or insurer and licensed in accordance with G.S. 58-71-41."

Section 2. G.S. 58-71-25 reads as rewritten:

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

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

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the~~ The court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the

case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded."

Section 3. Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-71-41. Temporary license as surety agent or professional bondsman.

(a) Authority to Issue Temporary License. -- The Commissioner may issue a temporary license as a surety bondsman or a runner in accordance with this section. A temporary license may be issued under this section only to a natural person. The Commissioner shall not issue a second or subsequent temporary license under this section to any individual whose temporary license in this State has expired.

(b) Application Generally. -- The applicant shall apply for a license on forms prepared and supplied by the Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this section relating to the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(c) Denial of Application and Reapplication for Temporary License. -- A person whose application under this section is denied may reapply, but the Commissioner may not consider more than one application submitted by the same person within any one-year period.

(d) Picture Identification Card Required; Surrender of Identification Card Upon Termination of Temporary License. -- When a temporary license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the temporary licensee. Each temporary licensee must carry this card at all times when working in the scope of the temporary licensee's employment. A temporary licensee whose temporary license is terminated must surrender the identification card to the Commissioner within 10 working days of the termination.

(e) Qualifications for Temporary License. -- An applicant for a temporary license must meet all of the following qualifications:

- (1) Be 18 years of age or older.
- (2) Be a resident of this State.
- (3) Be a person of high character and approved integrity.
- (4) Is not under indictment or information for and has no prior conviction, guilty plea, or plea of no contest for a felony or a crime involving moral turpitude.

- (5) Has not been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.
- (6) Has completed all educational requirements under G.S. 58-71-71 and licensure examination.

(f) Supporting Information Required to Accompany Application. -- In addition to the other requirements of this section, an applicant for a temporary license must provide all of the following with the applicant's application:

- (1) Documentation that affirmatively shows that the applicant is employed at the time of application, and that at all times throughout the existence of the temporary license, the applicant shall be employed by only one licensed and appointed supervising professional bondsman, surety bondsman, or authorized insurer, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business.
- (2) A certificate of employment that states the judicial district of the employer and the adjacent judicial districts to which the applicant's bail writing will be limited.
- (3) A report as to the applicant's integrity and moral character on a form prescribed by the Commissioner and executed by the employer.
- (4) Statements regarding the character of the applicant by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage as a temporary licensee.
- (5) A complete set of the applicant's fingerprints certified by an authorized law enforcement officer and a recent credential-sized, full-face photograph of the applicant. The Commissioner shall not issue a temporary license under this section until the Commissioner has received a report from the State Bureau of Investigation and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history based on the applicant's fingerprints.

(g) Fees. -- The Commissioner shall not issue a license under this section until all applicable license fees as prescribed in G. S. 58-71-55 are paid.

(h) Terms of Temporary Licenses. -- A temporary license issued under this section shall be effective for a period of one year from the date of issuance, subject to earlier termination at the request of the employer or upon suspension or revocation by the Commissioner. An individual licensed under this section shall not perform any functions for which a professional bondsman's license or a surety bondsman's license is required after expiration of the temporary license unless the individual is licensed under this Article as a runner or a surety bondsman.

(i) Authority of Temporary Licensee. -- Except as provided in subsection (j) of this section, a temporary licensee has the same authority as a professional bondsman or a surety bondsman. That authority includes presenting defendants in court, apprehending, arresting, and surrendering defendants to the proper authorities, keeping defendants under

necessary surveillance, executing or signing bonds, handling collateral receipts, and delivering bonds to appropriate authorities.

(j) Limitations on Temporary Licensee. -- A temporary licensee can only write bail in the judicial district where the main office of the employer of the temporary licensee is located and any adjacent judicial district. A temporary licensee shall not operate an agency or branch agency separate from the location of the supervising professional bondsman, surety bondsman, or insurer by whom the temporary licensee is employed.

(k) Liability of Employer of Temporary Licensee. -- The employer of a temporary licensee is responsible for the bail bonding acts of the temporary licensee.

(l) Eligibility of Temporary Licensee to Be Licensed as a Runner or Surety Bondsman. -- After completing the term as a temporary licensee, an individual may file an application for and become eligible for a license as a runner or surety bondsman."

Section 4. G.S. 58-71-145 reads as rewritten:

"§ 58-71-145. Financial responsibility of professional bondsmen.

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than ~~five-twenty-five~~ twenty-five thousand dollars ~~(\$5,000).~~ (\$25,000)."

Section 5. G.S. 15A-534 reads as rewritten:

"§ 15A-534. Procedure for determining conditions of pretrial release.

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

- (1) Release the defendant on his written promise to appear.
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official

must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3), and (3). The judicial official must record the reasons for so doing in writing the reasons for imposing conditions (1), (2), (3), or (4) to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court

of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

- (1) A judge authorized to do so releases the obligor from his bond; or
- (2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or
- (3) The proceeding is terminated by voluntary dismissal by the ~~State before forfeiture is ordered under G.S. 15A-544(b); or State; or~~
- (4) Prayer for judgment has been continued indefinitely in the ~~district court.~~ court; or
- (5) An appeal is made by the defendant from district court to superior court;
or
- (6) The court places the defendant in deferred prosecution.

(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as required, the court shall issue an order for arrest for the failure to appear and shall set a secured bond at an amount of at least twice the amount of the previous bond.

(j) If the principal fails to appear in court twice on the same charge, the conditions for pretrial release shall be set by a judge.

(k) A person who has been charged with or convicted of the commission of a felony under the laws of this State and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place commits the offense of felony bail-jumping if, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, the person fails without sufficient excuse to appear at that time and place. A person convicted of the offense of felony bail-jumping is guilty of a Class H felony.

(l) Any person who has been charged with or convicted of the commission of a misdemeanor and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place commits the offense of misdemeanor bail-jumping if, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, the person fails without sufficient excuse to appear at that time and place. A person convicted of the offense shall be guilty of a Class 3 misdemeanor.

(m) Any person who has been charged with or convicted of any misdemeanor and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place and who, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, leaves the State to avoid appearing and fails without sufficient excuse to appear at that time and place commits the offense of out-of-state bail-jumping. A person convicted of the offense of out-of-state bail-jumping is guilty of a Class I felony."

Section 6. This act becomes effective December 1, 1999. Section 5 of this act applies to offenses committed on or after December 1, 1999.