

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 649  
Committee Substitute Favorable 5/16/11  
Senate Judiciary II Committee Substitute Adopted 6/9/11

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8 Whereas, the North Carolina Court of Appeals held recently in its unpublished  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,  
33 untrustworthiness, or financial irresponsibility in the conduct of business in  
34 this State or any other jurisdiction.



- 1 (6) Conviction of a crime involving dishonesty, breach of trust, or moral  
 2 turpitude.
- 3 (7) Failure to comply with or violation of the provisions of this Article or of any  
 4 order, subpoena, rule or regulation of the ~~Commissioner.~~Commissioner or  
 5 person with similar regulatory authority in another jurisdiction.
- 6 ...
- 7 (14a) Having any professional license denied, suspended, or revoked in this State  
 8 or any other jurisdiction for causes substantially similar to those listed in this  
 9 subsection.
- 10 (14b) Violation of (i) any law governing bail bonding or insurance in this State or  
 11 any other jurisdiction or (ii) any rule of the Financial Industry Regulatory  
 12 Authority (FINRA).
- 13 (14c) Failure to comply with an administrative order or court order imposing a  
 14 child support obligation after entry of a final judgment or order finding the  
 15 violation to have been willful.
- 16 (14d) Failure to pay State income tax or comply with any administrative or court  
 17 order directing payment of State income tax after entry of a final judgment  
 18 or order finding the violation to have been willful.
- 19 (14e) Forging another's name to any document related to a bail bond transaction.

20 ...."

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

22 **"§ 58-71-82. Dual license holding.**

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

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

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

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

46 **"§ 58-71-122. Transfer of business by bail bondsman.**

47 A licensed professional bondsman may contract to transfer, convey, or assign the  
 48 professional bondsman's business to another professional bondsman licensed under this Article.  
 49 The contract shall include a list of the transferring professional bondsman's pending  
 50 outstanding bail bond obligations and shall be filed with the Commissioner. The contract shall  
 51 allow for the transferring professional bondsman to transfer, convey, or assign assets to the

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

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

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

13 a. The defendant.

14 b. Any surety.

15 c. A professional bondsman or a runner acting on behalf of a  
16 professional bondsman.

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

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

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

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

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

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

32 a. The defendant.

33 b. Any surety.

34 c. A professional bondsman or a runner acting on behalf of a  
35 professional bondsman.

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

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

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