

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**HOUSE DRH50618-LHf-134 (3/2)**

Short Title: Strike Fail To Appear/Bond Processing Fee.

(Public)

Sponsors: Representative Randleman.

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO ASSESS A PROCESSING FEE WHEN A FAILURE TO APPEAR IS  
STRICKEN AND AS A RESULT A BAIL BOND FORFEITURE IS SET ASIDE.

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), and (h) 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 with leave, as evidenced by a copy of an official court record, including an electronic record.
- (3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.
- (4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record.
- (5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.
- (6) The defendant was incarcerated in a unit of the North Carolina Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear as evidenced by a copy of an official court record or a copy of a document from the Department of Correction or Federal Bureau of Prisons, including an electronic record.



1 (7) The defendant was incarcerated in a local, state, or federal detention center,  
2 jail, or prison located anywhere within the borders of the United States at the  
3 time of the failure to appear, and the district attorney for the county in which  
4 the charges are pending was notified of the defendant's incarceration while  
5 the defendant was still incarcerated and the defendant remains incarcerated  
6 for a period of 10 days following the district attorney's receipt of notice, as  
7 evidenced by a copy of the written notice served on the district attorney via  
8 hand delivery or certified mail and written documentation of date upon  
9 which the defendant was released from incarceration, if the defendant was  
10 released prior to the time the motion to set aside was filed.

11 (c) Procedure When Failure to Appear Is Stricken. – If the court before which a  
12 defendant's appearance was secured by a bail bond enters an order striking the defendant's  
13 failure to appear and recalling any order for arrest issued for that failure to appear, that court  
14 may simultaneously enter an order setting aside any forfeiture of that bail bond. If the court  
15 enters an order setting aside a forfeiture of bail bond under this subsection, the court shall also  
16 assess a fee against the defendant pursuant to subsection (i) of this section. When an order  
17 setting aside a forfeiture is entered, the defendant's further appearances shall continue to be  
18 secured by that bail bond unless the court orders otherwise.

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

- 21 (1) At any time before the expiration of 150 days after the date on which notice  
22 was given under G.S. 15A-544.4, the defendant or any surety on a bail bond  
23 may make a written motion that the forfeiture be set aside, stating the reason  
24 and attaching the evidence specified in subsection (b) of this section.
- 25 (2) The motion is filed in the office of the clerk of superior court of the county  
26 in which the forfeiture was entered, and a copy is served, under G.S. 1A-1,  
27 Rule 5, on the district attorney for that county and the county board of  
28 education.
- 29 (3) Either the district attorney or the county board of education may object to  
30 the motion by filing a written objection in the office of the clerk and serving  
31 a copy on the moving party.
- 32 (4) If neither the district attorney nor the board of education has filed a written  
33 objection to the motion by the tenth day after the motion is served, the clerk  
34 shall enter an order setting aside the forfeiture.
- 35 (5) If either the district attorney or the county board of education files a written  
36 objection to the motion, then not more than 30 days after the objection is  
37 filed a hearing on the motion and objection shall be held in the county, in the  
38 trial division in which the defendant was bonded to appear.
- 39 (6) If at the hearing the court allows the motion, the court shall enter an order  
40 setting aside the forfeiture.
- 41 (7) If at the hearing the court does not enter an order setting aside the forfeiture,  
42 the forfeiture shall become a final judgment of forfeiture on the later of:  
43 a. The date of the hearing.  
44 b. The date of final judgment specified in G.S. 15A-544.6.
- 45 (8) If at the hearing the court determines that the documentation required to be  
46 attached pursuant to subdivision (1) of this subsection is fraudulent or was  
47 not attached to the motion at the time the motion was filed, the court may  
48 order monetary sanctions against the surety filing the motion, unless the  
49 court also finds that the failure to attach the required documentation was  
50 unintentional. This subdivision shall not limit the criminal prosecution of

1 any individual involved in the creation or filing of any fraudulent  
2 documentation.

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

5 (f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in which  
6 the State proves that the surety or the bail agent had notice or actual knowledge, before  
7 executing a bail bond, that the defendant had already failed to appear on two or more prior  
8 occasions, no forfeiture of that bond may be set aside for any reason.

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

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

16 (i) Fee. – If the court enters an order to set aside any forfeiture of bail bond pursuant to  
17 subsection (c) of this section, the court shall, upon conviction, impose a processing fee of fifty  
18 dollars (\$50.00) against the defendant unless (i) the bail bond for the defendant was executed  
19 by a professional bondsman or bail agent or (ii) the defendant is indigent as determined by the  
20 court. The fee shall be collected in addition to other costs as provided in G.S. 7A-304(c) and  
21 shall be remitted to the State Treasurer to be used for support of the General Court of Justice.  
22 The fifty-dollar (\$50.00) processing fee only applies when the forfeiture process has been  
23 initiated."

24 **SECTION 2.** G.S. 7A-304(c) reads as rewritten:

25 "(c) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-50.1(a),  
26 jail fees—fees, bail bond processing fees assessed pursuant to G.S. 15A-544.5(i), and cost of  
27 necessary trial transcripts shall be assessed as provided by law in addition to other costs set out  
28 in this section. Nothing in this section shall limit the power or discretion of the judge in  
29 imposing fines or forfeitures or ordering restitution."

30 **SECTION 3.** This act becomes effective December 1, 2009, and applies to any bail  
31 bond set aside for a failure to appear pursuant to G.S. 15A-544.5 on or after that date.