

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

HOUSE BILL 649
RATIFIED BILL

AN ACT TO AMEND THE LAWS PERTAINING TO GROUNDS FOR REVOCATION OF LICENSURE UNDER THE LAWS REGULATING BAIL BONDSMEN AND ALLOWING A BAIL AGENT ACTING ON BEHALF OF A SURETY COMPANY TO MAKE WRITTEN MOTIONS REGARDING SETTING ASIDE BAIL FORFEITURE AND RELIEF FROM FINAL JUDGMENT OF BAIL FORFEITURE UNDER THE LAWS PERTAINING TO CRIMINAL PROCEDURE.

Whereas, the North Carolina Court of Appeals held recently in its unpublished opinion in State v. Cortez, COA10-474, that G.S. 15A-544.5(d)(1) constitutes a jurisdictional limitation on the clerk's authority to grant motions to set aside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

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

- ...
- (5) ~~Fraudulent~~ Fraudulent, coercive, or dishonest practices in the conduct of business under the license or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or any other jurisdiction.
 - (6) Conviction of a crime involving dishonesty, breach of trust, or moral turpitude.
 - (7) Failure to comply with or violation of the provisions of this Article or of any order, subpoena, rule or regulation of the Commissioner ~~Commissioner~~ or person with similar regulatory authority in another jurisdiction.
- ...
- (14a) Having any professional license denied, suspended, or revoked in this State or any other jurisdiction for causes substantially similar to those listed in this subsection.
 - (14b) Violation of (i) any law governing bail bonding or insurance in this State or any other jurisdiction or (ii) any rule of the Financial Industry Regulatory Authority (FINRA).



- (14c) Failure to comply with an administrative order or court order imposing a child support obligation after entry of a final judgment or order finding the violation to have been willful.
- (14d) Failure to pay State income tax or comply with any administrative or court order directing payment of State income tax after entry of a final judgment or order finding the violation to have been willful.
- (14e) Forging another's name to any document related to a bail bond transaction.

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

"§ 58-71-82. Dual license holding.

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

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

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

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

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

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

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

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

- a. The defendant.
 - b. Any surety.
 - c. A professional bondsman or a runner acting on behalf of a professional bondsman.
 - d. A bail agent acting on behalf of an insurance company.
- The written motion shall state the reason for the motion and attach to the motion the evidence specified in subsection (b) of this section."

SECTION 7. G.S. 15A-544.5(d)(2) reads as rewritten:

"(2) The motion is shall be filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy is served, entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education. The clerk of superior court shall, by personal delivery or by mail, provide a copy of the motion to the district attorney for the county and to the attorney for the county board of education."

SECTION 8. G.S. 15A-544.5(d)(4) reads as rewritten:

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

SECTION 9. G.S. 15A-544.8(c)(1) reads as rewritten:

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

a. The defendant.

b. Any surety.

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

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

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

SECTION 10. G.S. 15A-544.8(c)(2) reads as rewritten:

"(2) The motion is shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education. The clerk of superior court shall, by personal delivery or by mail, provide a copy of the motion to the district attorney for the county and to the attorney for the county board of education."

SECTION 11. Sections 6, 7, 8, 9, and 10 of this act become effective December 1, 2011. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

Philip E. Berger
President Pro Tempore of the Senate

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2011