

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1219

Short Title: Pretrial Release & Bond.

(Public)

Sponsors: Representatives Baddour, Culpepper, and Gray (Primary Sponsors).

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-52 reads as rewritten:

"§ 1-52. Three years.

Within three years an action –

- (1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).
- (1a) Upon the official bond of a public officer.
- (2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.
- (3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.
- (4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.
- (5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.

- 1 (6) Against the sureties of any executor, administrator, collector or guardian
2 on the official bond of their principal; within three years after the breach
3 thereof complained of.
- 4 (7) Against ~~bail; bail or judgment of forfeiture;~~ within three years after
5 judgment of forfeiture under the provisions of G.S. 15A-544 against the
6 principal; but bail may discharge himself by a surrender of the principal, at
7 any time before final judgment against the bail-principal or surety.
- 8 (8) For fees due to a clerk, sheriff or other officer, by the judgment of a
9 court; within three years from the rendition of the judgment, or the
10 issuing of the last execution thereon.
- 11 (9) For relief on the ground of fraud or mistake; the cause of action shall
12 not be deemed to have accrued until the discovery by the aggrieved
13 party of the facts constituting the fraud or mistake.
- 14 (10) Repealed by Session Laws 1977, c. 886, s. 1.
- 15 (11) For the recovery of any amount under and by virtue of the provisions of
16 the Fair Labor Standards Act of 1938 and amendments thereto, said act
17 being an act of Congress.
- 18 (12) Upon a claim for loss covered by an insurance policy which is subject to
19 the three-year limitation contained in lines 158 through 161 of the
20 Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).
- 21 (13) Against a public officer, for a trespass, under color of his office.
- 22 (14) An action under Chapter 75B of the General Statutes, the action in
23 regard to a continuing violation accrues at the time of the latest
24 violation.
- 25 (15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S.
26 105-381.
- 27 (16) Unless otherwise provided by statute, for personal injury or physical
28 damage to claimant's property, the cause of action, except in causes of
29 actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to
30 the claimant or physical damage to his property becomes apparent or
31 ought reasonably to have become apparent to the claimant, whichever
32 event first occurs. Provided that no cause of action shall accrue more
33 than 10 years from the last act or omission of the defendant giving rise
34 to the cause of action.
- 35 (17) Against a public utility, electric or telephone membership corporation,
36 or a municipality for damages or for compensation for right-of-way or
37 use of any lands for a utility service line or lines to serve one or more
38 customers or members unless an inverse condemnation action or
39 proceeding is commenced within three years after the utility service line
40 has been constructed or by October 1, 1984, whichever is later.
- 41 (18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any
42 person acting under his supervision and control for physical damage or

1 economic or monetary loss due to negligence or a deficiency in the
2 performance of surveying or platting as defined in G.S. 1-47(6)."

3 Section 2. G.S. 15A-531 reads as rewritten:

4 **"§ 15A-531. Definitions.**

5 As used in this Article the following definitions apply unless the context clearly
6 requires otherwise:

- 7 (1) Bail Bond. – An undertaking by the principal to appear in court as
8 required upon penalty of forfeiting bail to the State of North Carolina in
9 a stated amount. Bail bonds include an unsecured appearance bond, an
10 appearance bond secured by a cash deposit of the full amount of the
11 bond, an appearance bond secured by a mortgage pursuant to G.S. 58-
12 74-5, and an appearance bond secured by at least one solvent surety. A
13 bail bond for which the surety is a surety bondsman, as defined in G.S.
14 58-71-1, acting on behalf of an insurer shall be considered the same as a
15 cash deposit for all purposes in this Article. ~~A bail bond signed by a~~
16 ~~professional bondsman who is not a surety bondsman, as defined in G.S. 58-~~
17 ~~71-1, shall not be considered the same as a cash deposit under this Article.~~
18 Cash bonds set in child support contempt proceedings shall not be
19 satisfied in any manner other than the deposit of cash.
- 20 (2) Obligor. – A principal or a surety on a bail bond.
- 21 (3) Principal. – A defendant or material witness obligated to appear in court
22 as required upon penalty of forfeiting bail under a bail bond.
- 23 (4) Surety. – One who, with the principal, is liable for the amount of the
24 bail bond upon forfeiture of bail."

25 Section 3. G.S. 15A-534 is amended by adding the following subsections:

26 "(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as
27 required, the court shall issue an order for arrest for the failure to appear and shall set a
28 secured bond at an amount of not less than twice the amount of the previous bond.
29 Failure of the court to comply with this provision shall not affect the validity of any order
30 of forfeiture.

31 (j) If the principal fails to appear in court on more than two occasions for the same
32 offense, a judge shall determine in open court whether or not to release the principal and,
33 if so, the conditions of release."

34 Section 4. G.S. 15A-544 reads as rewritten:

35 **"§ 15A-544. Forfeiture.**

36 (a) ~~By entering into executing a bail bond the obligor principal and each surety~~
37 ~~submits to the jurisdiction of the court and irrevocably appoints the clerk as the obligor's~~
38 ~~agent for any proceedings with reference to the bond. consents to be bound by any notice~~
39 ~~given in compliance with this section. The obligor's liability of the principal and each~~
40 ~~surety may be enforced on motion as provided in this section without the necessity of an~~
41 ~~independent action. Each obligor, including the principal, bail agent, and the surety represented~~
42 ~~by the bail agent, shall enter on the bond the obligor's~~ The following information shall be
43 entered on the bond:

1 (1) The principal and each accommodation bondsman shall enter that
2 person's mailing address, street address, and telephone number for the
3 service of any process required by this section or other provision of law.
4 If the address or telephone number of the obligor-principal or an
5 accommodation bondsman changes during the pendency of any
6 proceeding with reference to the bond, it shall be the duty of the obligor
7 that person to notify the clerk of the obligor's in writing within three
8 business days of that person's new address and telephone number.

9 (2) Each professional bondsman, each runner acting on behalf of a
10 professional bondsman, and each surety bondsman acting on behalf of
11 an insurer shall enter on the bond a reference to the license or power of
12 attorney under which the professional bondsman or insurer is authorized
13 to execute bonds in the county, as that license or power is registered in
14 the office of the clerk of superior court pursuant to G.S. 58-711-140.

15 (a1) Each of the following terms shall have in this Article the same meaning that
16 those terms have in Article 71 of Chapter 58 of the General Statutes, under the definitions
17 in G.S. 58-71-1: accommodation bondsman, bail bond, insurer, professional bondsman,
18 runner, surety bondsman.

19 (b) If the principal does not comply with the conditions of the bail bond, the court
20 having jurisdiction must enter an order declaring the bail to be forfeited. If-When
21 forfeiture is ordered by the court, a copy of the order of forfeiture and notice that
22 judgment will be entered upon the order after 60-90 days from the date upon which the
23 principal failed to appear must be served on each obligor by the clerk on the principal and
24 surety. Service is to be made by the clerk by mailing by first-class mail a copy of the
25 order of forfeiture and notice to each obligor at each obligor's address as noted on the bond
26 and note on the original the date of mailing, as follows:

27 (1) To the principal and each accommodation bondsman at the address as
28 last noted on the bond; and

29 (2) To each professional bondsman and insurer at the address shown on the
30 license or power of attorney most recently registered with the clerk of
31 superior court pursuant to G.S. 58-71-140.

32 The clerk shall note on the original notice the date of mailing. Service is complete
33 three days after the mailing. The clerk may also provide a copy of the notice to any
34 runner or surety bondsman who executed the bond on behalf of a professional bondsman
35 or insurer, but the clerk's failure or refusal to do so shall not affect the liability of the
36 professional bondsman or insurer.

37 (c) Except as provided in subsection (c1) of this section, at any time within 60
38 days following the date of service, or on the first presentment of the forfeiture calendar
39 more than 60 days after the date of service, At any time prior to the entry of a judgment
40 as provided in subsection (d) of this section, the principal or surety may move the court
41 having jurisdiction of the matter, orally in open court or in writing, to strike the order of
42 forfeiture and recall the notice of forfeiture. Notice or a copy of the motion filed shall be
43 served upon the attorney for the county school board and the district attorney at least

1 three working days prior to the next regularly scheduled bond hearing date as provided in
2 subsection (d) of this section. The petitioner, the district attorney, and the county school
3 board attorney shall be given an opportunity to appear and be heard.

4 ~~If the principal or surety appears and moves within the time allowed~~ 90 days following
5 the date of service of the order of forfeiture and satisfies the court that the principal's
6 failure to appear on the date set was impossible or that the principal's failure to appear was
7 without the principal's fault, because the principal was either incarcerated in North
8 Carolina, or was unable to appear because of physical or mental illness, the order of
9 forfeiture must shall be set aside.

10 If, at the hearing, the principal or surety satisfies the court that the principal's failure
11 to appear was without the principal's fault, or if the principal is surrendered by the surety
12 on the order for arrest and incarcerated in the State within 90 days of the entry of the
13 order of forfeiture the order of forfeiture may be stricken in whole or in part at the
14 discretion of the court upon the payment of costs.

15 ~~If the principal or surety does not satisfy the court that the principal's appearance on~~
16 ~~the date set was impossible or that the principal's failure to appear was without the~~
17 ~~principal's fault, court, then the court must then shall enter judgment for the State against~~
18 ~~the principal and surety for the amount of the bail and the cost of the proceeding.~~
19 proceeding as provided in subsection (d) of this section.

20 ~~(c1) If the principal does not appear before the court having jurisdiction because the~~
21 ~~principal is incarcerated in North Carolina and unable to appear before the court, but the~~
22 ~~surety appears within the time allowed following the date of service and satisfies the~~
23 ~~court that the principal's appearance on the date set was impossible because the principal~~
24 ~~was incarcerated in North Carolina, the order of forfeiture must be set aside.~~

25 ~~(d) To facilitate the procedure under this section, the~~ The clerk in each county shall
26 prepare for both the district and superior court a ~~forfeiture bond~~ calendar at least once
27 each month when court is in session. The respective calendars shall be heard by the
28 senior resident superior court judge and chief district judge or their designees at least
29 once each month when court is in session. The forfeiture bond calendar shall list the
30 names of all principals and sureties to whom forfeiture has been ordered more than 60-90
31 days previously in the county and as to which judgments of forfeiture against the
32 principal and surety have not been entered or, if entered, not yet satisfied by execution. or
33 stricken. The forfeiture calendar shall show the amount of the bond ordered forfeited in
34 each case. In addition, the clerk shall place on the forfeiture calendar for hearing all
35 written motions to strike an order of forfeiture filed since the previous forfeiture calendar.
36 It shall be the duty of the district attorney to present the forfeiture calendar to the court,
37 but the attorney for the county school board shall have the right to appear and be heard
38 when the forfeiture calendar is presented. At the district attorney's discretion, the district
39 attorney may appoint the county school board attorney as the district attorney's designee
40 for the presentation of the forfeiture calendar.

41 ~~(e) At any time within 90 days~~ three years after entry of the judgment of forfeiture
42 against a principal or surety, the principal or surety, by verified written petition, petition
43 setting forth the specific grounds upon which remission is being requested, may request

1 that the judgment be remitted in whole or in part, ~~upon such conditions as the court may~~
2 ~~impose, if it appears that justice requires the remission of part or all of the judgment for~~
3 ~~extraordinary cause shown.~~ A copy of the petition must shall be served upon the attorney
4 for the county school board and the district attorney at least three working days prior to
5 the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that
6 have been filed during the previous month or since the last ~~forfeiture bond~~ calendar. The
7 petitioner, the district attorney, and the school board attorney shall be notified of the date,
8 time, and place of the ~~hearing~~ hearing as provided in subsection (d) of this section. The
9 petitioner, the district attorney, and the county school board attorney shall be given an
10 opportunity to appear and be heard. ~~If the principal is surrendered by the surety and~~
11 ~~incarcerated in the State within 90 days of the entry of the judgment, the forfeiture shall be~~
12 ~~stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest~~
13 ~~in North Carolina within 90 days of the entry of the judgment and the principal placed on a new~~
14 ~~bond or released by the court, then the forfeiture shall be stricken upon the payment of costs.~~ If
15 money has been paid to the county school fund pursuant to execution on a judgment of
16 forfeiture, the school board shall refund to the principal or surety entitled the amount of
17 any remission less costs granted under the terms of this subsection upon receipt of a
18 certified copy of the judgment of remission from the clerk.

19 (f) ~~If a judgment has not been remitted within the period provided in subsection (e)~~
20 ~~above, the~~ The clerk must shall issue execution on the judgment within not less than 30
21 days, days nor more than 45 days after the entry of the judgment, and remit the clear
22 proceeds to the county school fund for use in maintaining free public schools. Any clerk
23 who fails to perform his duty as required in this subsection is subject to a penalty of five
24 hundred dollars (\$500.00). The judgment shall bear interest from the date of breach at
25 the 'legal rate'. The filing of a petition for remission does not stay the execution of the
26 judgment of forfeiture. Any stay of execution shall be obtained in accordance with Rules
27 62, 6, and 7 of the North Carolina Rules of Civil Procedure.

28 (g) ~~If a levy of execution upon a judgment against an obligor remains unsatisfied for~~
29 ~~10 days, the sheriff clerk shall notify the clerks and magistrates in each the county in the~~
30 ~~prosecutorial district and the obligor and the North Carolina Department of Insurance, and~~
31 ~~the surety shall not become surety on any bail bond in the prosecutorial district county so~~
32 ~~long as the judgment remains unsatisfied. If the execution is not satisfied by a bail~~
33 ~~bondsman licensed under the provisions of Article 71 of Chapter 58 of the General~~
34 ~~Statutes within 10 days of the issuance of execution, the Commissioner of Insurance,~~
35 ~~upon notice from the clerk, shall suspend the surety's license as provided by G.S. 58-71-~~
36 ~~80(a)(7) and shall satisfy the execution from the bail bondsman's deposit required by G.S.~~
37 ~~58-71-145. Nothing in this subsection makes lawful any act made unlawful by Article 71~~
38 ~~of Chapter 58 of the General Statutes.~~

39 (h) ~~For extraordinary cause shown, the court which has entered judgment upon a~~
40 ~~forfeiture of a bond may, after execution, remit the judgment in whole or in part and~~
41 ~~order the clerk to refund such amounts as the court considers appropriate. Any person~~
42 ~~moving for remission of judgment must do so by verified petition, and a copy of the~~
43 ~~petition must be served upon the attorney for the county school board at least three~~

1 ~~working days prior to the hearing on the motion. The moving party must notify the~~
2 ~~attorney for the school board of the time and place of the hearing, and such attorney, if he~~
3 ~~so desires, must be given an opportunity to appear and be heard. If money has been paid~~
4 ~~to the county pursuant to execution on a judgment of forfeiture, it must refund to the~~
5 ~~person entitled the amount of any remission granted under the terms of this subsection~~
6 ~~upon receipt of a certified copy of the judgment of remission from the clerk.~~

7 (i) A principal, a surety, the State, or a local board of education may appeal from:
8 (i) an order striking the order of forfeiture, (ii) the entry of a judgment of forfeiture or
9 order of remission, in whole or in part, or (iii) denial of a petition to remit a judgment of
10 forfeiture, in whole or in part. The Rules of Appellate Procedure applicable to a civil
11 action shall apply to the appeal.”

12 Section 5. G.S. 15A-547.1 reads as rewritten:

13 **"§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate**
14 **punishment.**

15 If bail has not been forfeited for the defendant's failure to appear and a defendant is
16 convicted and sentenced to community punishment or intermediate punishment and no
17 appeal is pending, then the court shall remit the bail bond to the obligor release the surety of
18 his obligation on the bail bond in accordance with the provisions of this Article and shall
19 not require that the bail bond continue to be posted while the defendant serves his or her
20 sentence. Article. However, the court in its discretion may require the defendant to post a
21 new bond as a condition for compliance with any condition of a suspended sentence,
22 probation, or deferred prosecution."

23 Section 6. G.S. 24-5(a) reads as rewritten:

24 "(a) Contracts. – ~~In an action for breach of contract, except an action on a penal bond,~~
25 ~~the amount awarded on the contract bears interest from the date of breach. The fact finder~~
26 ~~in an action for breach of contract shall distinguish the principal from the interest in the~~
27 ~~award, and the judgment shall provide that the principal amount bears interest until the~~
28 ~~judgment is satisfied. If the parties have agreed in the contract that the contract rate shall~~
29 ~~apply after judgment then interest on an award in a contract action shall be at the contract~~
30 ~~rate after judgment, otherwise it shall be at the legal rate; provided, however, that on~~
31 ~~awards in actions on contracts pursuant to which credit was extended for personal,~~
32 ~~family, household, or agricultural purposes, interest shall be at the legal rate, provided~~
33 ~~however, such rate shall not exceed the contract rate."~~

34 Section 7. G.S. 58-71-35(b) is repealed.

35 Section 8. This act is effective when it becomes law.