



SENATE BILL 508: Amd. BailBond/Coll.Agcy/Crim.Mediat'n Laws.

2016-2017 General Assembly

Committee:	House Judiciary III	Date:	June 14, 2016
Introduced by:	Sens. Lee, Randleman	Prepared by:	Bill Patterson
Analysis of:	PCS to Third Edition S508-CSTG-62		Committee Co-Counsel

SUMMARY: *The PCS for Senate Bill 508 would: terminate a surety's obligation under a bail bond under specified circumstances; require a bond forfeiture judgment to be paid in full before any professional bail bondsman, runner or bail agent listed on that bond can sign any other bond in the county where the judgment is docketed; expand the Insurance Commissioner's disciplinary authority over bail bondsmen and runners; update and modernize certain laws related to collection agencies; and amend procedures for mediation of certain misdemeanor criminal cases. The PCS removes a provision that would have permitted an obligor to terminate a bond by giving notice of termination 36 months after the bond was executed, and makes other technical and conforming changes to the bill.*

CURRENT LAW AND BILL ANALYSIS:

SECTIONS 1 – 3 (BAIL BONDS)

Section 1

Pretrial release for criminal defendants is subject to any conditions imposed by the court pursuant to G.S. 15A-534. When the defendant's appearance cannot reasonably be assured by one of the less stringent conditions, the defendant may be required to execute an appearance bond secured by a solvent surety.¹ The surety forfeits the amount of the bond if the defendant fails to appear in court.

Currently, a copy of any order of release containing the conditions of pretrial release must be given to the defendant, but is not required to be given to the surety on the bond. G.S. 15A-534(d). Also under current law, the surety's liability under the bond continues for as long as the criminal case is active in the trial division or on appeal, unless (1) a judge releases the obligor from his bond, (2) the defendant is surrendered into custody by the surety, (3) the charges are voluntarily dismissed by the State before a forfeiture has occurred, or (4) prayer for judgement has been continued indefinitely in the district court.

Section 1 of the PCS for Senate Bill 508 would require a copy of the order containing the conditions of pretrial release to be given to any surety executing a bond for the defendant's release, and would add two new circumstances under which a surety's obligation under the bond would be terminated:

- The defendant is found to lack the mental capacity to proceed.
- The defendant is placed on probation pursuant to a deferred prosecution or conditional discharge. (In that event, Section 1 would further require the court to remove any requirement of a secured bond from the conditions of pretrial release.)

¹ In the absence of such a determination, the defendant must be released on his written promise to appear, on unsecured bond, or upon being placed in the custody of someone who agrees to supervise him. G.S. 15A-534(a)(1), (2), (3).

Karen Cochrane-Brown
Director



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Section 2

Under current law, when a forfeiture of the bail bond has become a final judgment, no surety named in the judgment is permitted to be a surety on any bail bond in the county where that judgment is docketed until it is satisfied in full. However, this prohibition currently applies only to the surety, and does not prohibit a bail bondsman, runner, or bail agent involved in the posting of the forfeited bond from signing another bond in that county on behalf of some other surety.

Section 2 would require a forfeiture judgment to be paid in full before a professional bail bondsman, runner or bail agent whose name appears on that bond would be permitted to sign any other bond in the county in which the judgment is docketed.

Section 3

Bail bondsmen are regulated by the Commissioner of Insurance. The Commissioner is currently authorized to deny, revoke, or refuse to renew the license of any bail bondsman for failure to pay State income tax, or for failure to comply with any administrative or court order directing payment of State income tax after entry of a final judgment or order finding that the violation was willful.

Section 3 would extend the Commissioner's disciplinary power to a bail bondsman or runner who fails to pay federal income tax, and would permit sanctions to be imposed without first finding a willful failure to pay State or federal tax.

Section 3 would also give the Commissioner disciplinary authority over any person whose license or registration has been surrendered or has lapsed, and would authorize the summary suspension of a license upon the Commissioner's written finding of good cause to believe that emergency action is required to protect the public health, safety or welfare, or to avoid a significant risk of unsatisfied bond forfeitures.

SECTIONS 4 – 7 (COLLECTION AGENCIES)

Section 4

Pursuant to Article 70 of Chapter 58 of the General Statutes, persons seeking to operate a collection agency are currently required to apply to the Commissioner of Insurance for a permit for each location at which the person desires to carry on that business.

Section 4 would provide that if a collection agency holds a valid permit for at least one physical location in the State, a separate permit is not required in order for a collector working under the control and monitoring of that agency to work from home.

Section 5

Applicants for a permit to operate a collection agency are currently required to file a bond in the amount of \$10,000 for the initial annual permit, and for any renewal of the permit, a bond is required in an amount not less than \$10,000 nor more than \$75,000, calculated by a formula taking into account the total collections and commissions earned on those collections.

Section 5 would reduce the maximum amount of the required bond for a permit renewal from \$75,000 to \$30,000.

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Section 6

Currently, a collection agency is not required to refund overpayments by a debtor in an amount of less than \$1.00. Section 6 would increase this amount so that a refund would not be required for any overpayment in an amount of less than \$5.00.

Section 7

Under current law, collection agencies are not permitted to collect from the consumer any part of the agency's fee or charge for services rendered, or to collect any other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.²

Section 7 of the PCS would authorize a collection agency to charge a convenience fee for processing a particular method of payment by a consumer who has agreed to make payments on the debt, provided that:

- The consumer authorizes the particular method of payment for which the fee is to be charged after being offered the option of paying by a reasonable alternative means without a fee.
- The fee does not exceed 5% of the payment or \$10.00, whichever is less.
- The collection agency conspicuously and clearly discloses in writing or by voice recording the fact that a fee will be charged, the amount of the fee, the number of times it will be charged, and the method of payment by which the consumer can avoid paying the fee.

SECTIONS 8 – 10 (MISDEMEANOR CRIMINAL MEDIATIONS)

Chief district court judges currently refer all misdemeanor criminal actions initiated in district court by means of a citizen-initiated arrest warrant to a local community mediation center for resolution, except for those involving domestic violence, those deemed to be inappropriate for mediation, or those being tried in a county where mediation services are not available. Community mediation centers are authorized to establish and charge fees for these services. If a case is not resolved through mediation within 30 days from the date the case was referred to the center, the court may proceed with the case as a criminal action.

G.S. 7A-38.7 requires assessment of a fee of \$60.00 per mediation for each criminal case that is resolved through referral to a community mediation center. The fee supports the services provided by the community mediation centers and the Mediation Network of North Carolina. Fees must be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Mediation Network of North Carolina, which can keep up to \$3.00 of the fee for its administrative expenses and must remit the remainder to the center that mediated the case. The court may waive or reduce the assessed fee by written order determining there is just cause to do so. Before providing the district attorney with a dismissal form, the community mediation center must require proof that the defendant has paid the dispute resolution fee and must attach the receipt to the dismissal form.

Section 8 of the PCS would change a statutory cross-reference to conform to changes made in Section 9 of the PCS.

Section 9 would clarify that centers and mediators shall not charge any fee for mediating criminal cases other than the fee that is set forth in G.S. 7A-38.7. In addition, this section would permit criminal actions generated by a criminal summons to be referred to mediation and would enlarge to 45 days the time community mediation centers have to resolve a criminal case before it proceeds in court.

² G.S. 58-75-115(2).

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Section 10 would amend G.S. 7A-38.7 to require the dispute resolution fee to be assessed upon the referral to a community mediation center of each criminal case, and would require the fee to be paid in advance of the mediation by the defendant, unless otherwise agreed prior to mediation by the parties to the referred case, or unless the fee is waived or reduced by written court order determining that good cause exists for the waiver or reduction. In addition, mediators and volunteers or employees of a community mediation center would be prohibited from receiving payment directly from any mediation participant and from receiving any fee other than the \$60 fee assessed under G.S. 7A-38.7.

EFFECTIVE DATE: Sections 1 and 2 of the act would become effective on December 1, 2016, and Section 2 would apply to bonds executed on or after that date. Sections 4 and 5 would become effective on October 1, 2016, and apply to permits filed or renewed on or after that date. Sections 6 and 7 of the act would become effective October 1, 2016, and apply to consumer payments received on or after that date. Sections 8, 9 and 10 would become effective October 1, 2016, and apply to cases referred to mediation on or after that date. The remainder of the act would be effective when it becomes law.

Jan Paul, co-counsel to House Judiciary III, substantially contributed to this summary.