



SENATE BILL 508: Amend Bail Bond/Collection Agency/Criminal Mediation Laws.

2015-2016 General Assembly

Committee:		Date:	July 28, 2016
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2016-107		

OVERVIEW: *S.L. 2016-107 makes the following changes to laws relating to bail bonds, collection agencies, and mediation of misdemeanor criminal cases:*

- *Terminates a surety's obligation under a bail bond under specified circumstances.*
- *Requires 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 elsewhere in the State.*
- *Expands the Commissioner of Insurance's disciplinary authority over bail bondsmen and runners.*
- *Updates and modernizes certain laws related to collection agencies.*
- *Amends procedures for mediation of certain misdemeanor criminal cases.*

This act has various effective dates. Please see the full summary for more detail.

BILL ANALYSIS:

Sections 1 – 4 (Bail Bonds)

Pretrial release for criminal defendants is subject to any conditions imposed by the court. 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.

Prior to enactment of this act, a copy of any order of release containing the conditions of pretrial release was required to be given to the defendant, but was not required to be given to the surety on the bond. Also, the surety's liability under the bond continued for as long as the criminal case was active in the trial division or on appeal, unless (1) a judge released the obligor from his bond, (2) the defendant was surrendered into custody by the surety, (3) the charges were voluntarily dismissed by the State before a forfeiture has occurred, or (4) prayer for judgement had been continued indefinitely in the district court.

Section 1 of the act requires 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 permits the termination of a surety's obligation under the bond if the defendant is placed on probation pursuant to a deferred prosecution or conditional discharge, in which event the court must 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).

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Under the law prior to enactment of this act, when a bail bond forfeiture became a final judgment, no surety named in the judgment was permitted to be a surety on any bail bond in the county where that judgment was docketed until it was satisfied in full. However, this prohibition applied only to the surety, and did not prohibit a bail bondsman, runner, or bail agent involved in posting the forfeited bond from signing another bond elsewhere in the State on behalf of some other surety.

Section 2 expands this prohibition by prohibiting a professional bail bondsman, runner or bail agent whose name appears on a forfeited bond from signing any other bond in any licensed capacity statewide until the forfeiture judgment is paid in full.

Professional bondsmen, surety bondsmen and runners are licensed by the Commissioner of Insurance. Prior to enactment of this act, the circumstances under which the Commissioner was authorized to deny, revoke, or refuse to renew such a license included failure to pay State income tax, and 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 of the act permits the Commissioner to deny, revoke, or refuse to renew the license of a licensee who fails to pay federal income tax, and permits the Commissioner to do so without first finding that the failure to pay State or federal tax was willful. Section 3 also gives the Commissioner disciplinary authority over any person whose license or registration has been surrendered or has lapsed, and authorizes 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.

Under the law prior to enactment of this act, bail bondsmen and runners were required to renew their licenses annually, for a fee of \$60 for runners and \$120 for bail bondsmen.

Section 4 of the act requires renewal of these licenses every two years, for a fee of \$120 for runners and \$200 for bail bondsmen.

Sections 5 – 6 (Collection Agencies)

Prior to enactment of this act, a collection agency was required to apply to the Commissioner of Insurance for a permit for each location at which the agency desired to carry on that business.

Section 5 of the act provides that a collection agency holding a valid permit for at least one physical location in this State does is not required to obtain a separate permit to operate from a remote location at which a single employee works under the agency's control and monitoring through telecommunications and computer links, provided that the records the agency is required to keep are not maintained at the remote location and the remote location is not held open to the public as a place of business.

Prior to enactment of this act, applicants for a permit to operate a collection agency were required to file a bond in the amount of \$10,000 to receive an initial annual permit, and for subsequent renewals of the permit, were required to file a bond in an amount not less than \$10,000 nor more than \$75,000, calculated under a formula taking into account the total collections and commissions earned on those collections.

Section 6 of the act reduces the maximum amount of the bond required for renewal of a permit from \$75,000 to \$30,000.

Sections 7 – 9 (Mediation of Misdemeanor Criminal Actions)

Chief district court judges are required to refer certain misdemeanor criminal actions initiated in district court to mediation at a local community mediation center, except for those involving domestic violence, those deemed to be inappropriate for mediation, or those being tried in a county where mediation

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services are not available. Under the law prior to enactment of this act, only such actions arising from a citizen-initiated arrest warrant were required to be referred for mediation, and community mediation centers were authorized to establish and charge fees for these services. If a case was not resolved through mediation within 30 days from the date the case was referred to the center, the court could proceed with the case as a criminal action.

Under the prior law, a fee of \$60.00 was assessed and payable to the clerk for each criminal case that was resolved through referral to a community mediation center, and before providing the district attorney with a dismissal form, the community mediation center was required to receive proof that the defendant had paid the dispute resolution fee and was required to attach the receipt to the dismissal form.

Section 7 of the act requires the \$60 criminal mediation fee to be assessed and paid to the clerk in advance of mediation.

Section 8 of the act provides that centers and mediators are not permitted to charge any fee for mediating criminal cases other than the \$60 criminal mediation fee, expands the misdemeanor criminal actions required to be referred for mediation to include cases generated by a criminal summons, and increases from 30 to 45 days the time within which a case may be resolved by mediation.

Section 9 requires assessment of the \$60.00 dispute resolution fee upon the referral of a case to a community mediation center, requires the court to inform the participants of the fee requirement, and requires the fee to be paid in advance of the mediation by the defendant, unless all parties to the mediation agree to a different allocation or the fee is waived or reduced by written court order. In addition, mediators and community mediation center volunteers and employees are prohibited from receiving payment directly from any mediation participant or charging or collecting any fee other than the \$60.00 fee paid to the clerk for services in mediating a referred misdemeanor criminal action.

EFFECTIVE DATE: Sections 1 and 2 of the act become effective on December 1, 2016, and Section 2 applies to bonds executed on or after that date. Sections 5 and 6 of the act become effective on October 1, 2016, and apply to permits filed or renewed on or after that date. Sections 7, 8, and 9 of the act become effective October 1, 2016, and apply to cases referred to mediation on or after that date. The remainder of the act became effective July 31, 2016.

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