**South Carolina General Assembly**

119th Session, 2011-2012

**A286, R329, S45**

**STATUS INFORMATION**

General Bill

Sponsors: Senators McConnell, Campsen and Ford

Document Path: l:\s-jud\bills\mcconnell\jud0024.jjg.docx

Companion/Similar bill(s): 266

Introduced in the Senate on January 11, 2011

Introduced in the House on March 28, 2012

Last Amended on June 28, 2012

Passed by the General Assembly on June 28, 2012

Governor's Action: June 29, 2012, Signed

Summary: Bond reconsideration

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/1/2010 Senate Prefiled

 12/1/2010 Senate Referred to Committee on **Judiciary**

 1/11/2011 Senate Introduced and read first time ([Senate Journal‑page 25](file:///h%3A%5Csj%20archive%5C2011%5C01-11-11.docx))

 1/11/2011 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 25](file:///h%3A%5Csj%20archive%5C2011%5C01-11-11.docx))

 1/9/2012 Senate Referred to Subcommittee: Knotts (ch), Massey, Coleman

 3/7/2012 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 10](file:///h%3A%5Csj%20archive%5C2012%5C03-07-12.docx))

 3/8/2012 Scrivener's error corrected

 3/20/2012 Senate Committee Amendment Adopted ([Senate Journal‑page 80](file:///h%3A%5Csj%20archive%5C2012%5C03-20-12.docx))

 3/20/2012 Senate Read second time ([Senate Journal‑page 80](file:///h%3A%5Csj%20archive%5C2012%5C03-20-12.docx))

 3/20/2012 Senate Roll call Ayes‑38 Nays‑0 ([Senate Journal‑page 80](file:///h%3A%5Csj%20archive%5C2012%5C03-20-12.docx))

 3/27/2012 Senate Read third time and sent to House ([Senate Journal‑page 21](file:///h%3A%5Csj%20archive%5C2012%5C03-27-12.docx))

 3/28/2012 House Introduced and read first time ([House Journal‑page 12](file:///h%3A%5Chj%20archive%5C2012%5C03-28-12.docx))

 3/28/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 12](file:///h%3A%5Chj%20archive%5C2012%5C03-28-12.docx))

 5/30/2012 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 34](file:///h%3A%5Chj%20archive%5C2012%5C05-30-12.docx))

 6/5/2012 House Requests for debate‑Rep(s). Ott, Sellers, Williams, Sabb, Munnerlyn, Brantley, Rutherford, Hosey, Hardwick ([House Journal‑page 85](file:///h%3A%5Chj%20archive%5C2012%5C06-05-12.docx))

 6/6/2012 House Amended ([House Journal‑page 61](file:///h%3A%5Chj%20archive%5C2012%5C06-06-12.docx))

 6/6/2012 House Read second time ([House Journal‑page 61](file:///h%3A%5Chj%20archive%5C2012%5C06-06-12.docx))

 6/6/2012 House Roll call Yeas‑84 Nays‑23 ([House Journal‑page 71](file:///h%3A%5Chj%20archive%5C2012%5C06-06-12.docx))

 6/7/2012 House Read third time and returned to Senate with amendments

 6/7/2012 Senate Non‑concurrence in House amendment ([Senate Journal‑page 123](file:///h%3A%5Csj%20archive%5C2012%5C06-07-12.docx))

 6/7/2012 Senate Roll call Ayes‑0 Nays‑38 ([Senate Journal‑page 123](file:///h%3A%5Csj%20archive%5C2012%5C06-07-12.docx))

 6/7/2012 House House insists upon amendment and conference committee appointed Reps. Bannister, McCoy, and Stavrinakis ([House Journal‑page 56](file:///h%3A%5Chj%20archive%5C2012%5C06-07-12.docx))

 6/7/2012 Senate Conference committee appointed Knotts, Massey, and Coleman ([Senate Journal‑page 125](file:///h%3A%5Csj%20archive%5C2012%5C06-07-12.docx))

 6/21/2012 House Free conference powers granted ([House Journal‑page 215](file:///h%3A%5Chj%20archive%5C2012%5C06-21-12.docx))

 6/21/2012 House Roll call Yeas‑95 Nays‑0 ([House Journal‑page 216](file:///h%3A%5Chj%20archive%5C2012%5C06-21-12.docx))

 6/21/2012 House Free conference committee appointed Bannisster, McCoy, Stavrinakis ([House Journal‑page 217](file:///h%3A%5Chj%20archive%5C2012%5C06-21-12.docx))

 6/21/2012 House Free conference report adopted ([House Journal‑page 217](file:///h%3A%5Chj%20archive%5C2012%5C06-21-12.docx))

 6/21/2012 House Roll call Yeas‑82 Nays‑0 ([House Journal‑page 223](file:///h%3A%5Chj%20archive%5C2012%5C06-21-12.docx))

 6/28/2012 Senate Free conference powers granted ([Senate Journal‑page 28](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/28/2012 Senate Roll call Ayes‑32 Nays‑0 ([Senate Journal‑page 28](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/28/2012 Senate Free conference committee appointed Knotts, Massey, and Coleman ([Senate Journal‑page 28](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/28/2012 Senate Free conference report adopted ([Senate Journal‑page 28](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/28/2012 Senate Roll call Ayes‑32 Nays‑0 ([Senate Journal‑page 28](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/28/2012 Senate Ordered enrolled for ratification ([Senate Journal‑page 37](file:///h%3A%5Csj%20archive%5C2012%5C06-28-12.docx))

 6/29/2012 Ratified R 329

 6/29/2012 Signed By Governor

 7/17/2012 Effective date 06/29/12

 7/17/2012 Act No. 286

**VERSIONS OF THIS BILL**

[12/1/2010](file:///p%3A%5Cpprever%5C2011-12%5C45_20101201.docx)

[3/7/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120307.docx)

[3/8/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120308.docx)

[3/20/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120320.docx)

[5/30/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120530.docx)

[6/6/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120606.docx)

[6/28/2012](file:///p%3A%5Cpprever%5C2011-12%5C45_20120628.docx)

(A286, R329, S45)

**AN ACT TO AMEND SECTION 17‑15‑30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MATTERS TO BE CONSIDERED BY THE COURT WHEN DETERMINING RELEASE OF A PERSON ON BOND, SO AS TO DELETE REFERENCES TO SPECIFIC LAW ENFORCEMENT ENTITIES AND INSERT ARRESTING LAW ENFORCEMENT AGENCY AS APPROPRIATE TO PROVIDE THE COURT WITH NECESSARY INFORMATION; BY ADDING SECTION 17‑15‑55 SO AS TO PROVIDE THAT THE CIRCUIT COURT MAY CONSIDER MOTIONS REGARDING RECONSIDERATION OF BOND FOR GENERAL SESSIONS OFFENSES SET BY A SUMMARY COURT JUDGE, TO PROVIDE THAT FURTHER DEFENSE MOTIONS TO RECONSIDER BOND MAY BE HEARD BY THE CIRCUIT COURT ONLY UPON THE DEFENDANT’S PRIMA FACIE SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCES, TO PROVIDE THAT MOTIONS BY THE STATE TO REVOKE OR MODIFY A DEFENDANT’S BOND MUST BE MADE IN WRITING, STATE WITH PARTICULARITY THE GROUNDS FOR REVOCATION OR MODIFICATION, AND SET FORTH THE RELIEF OR ORDER SOUGHT, AND TO PROVIDE THAT, IF THE STATE’S MOTION TO REVOKE OR MODIFY BOND INCLUDES A PRIMA FACIE SHOWING OF IMMINENT DANGER TO THE COMMUNITY, OR IMMINENT DANGER TO THE DEFENDANT, OR FLIGHT BY THE DEFENDANT, THE CHIEF JUDGE OR PRESIDING JUDGE SHALL CONDUCT OR ORDER AN EMERGENCY HEARING WITHIN FORTY‑EIGHT HOURS; TO AMEND SECTION 17‑15‑10, RELATING TO RELEASE OF A PERSON CHARGED WITH A NONCAPITAL OFFENSE ON HIS OWN RECOGNIZANCE OR ON BOND, SO AS TO ALLOW A PERSON CHARGED WITH BURGLARY IN THE FIRST DEGREE TO HAVE HIS BOND HEARING IN SUMMARY COURT UNLESS THE SOLICITOR OBJECTS; TO PROVIDE THAT THE PROVISIONS OF ACT 115 OF 2012 WHICH AMENDED SECTION 17‑15‑20 OF THE 1976 CODE ARE RETROACTIVE; AND TO AMEND SECTION 38‑53‑50, AS AMENDED, RELATING TO BAIL BONDSMEN OR SURETIES RELIEVED OF BOND UNDER CERTAIN CIRCUMSTANCES, SO AS TO PROVIDE THAT ONCE THE REQUIRED AFFIDAVIT IS FILED THE SURETY IS RELIEVED OF LIABILITY ON THE BOND UNLESS OTHERWISE ORDERED BY THE CIRCUIT COURT WITHIN A CERTAIN PERIOD OF TIME.**

Be it enacted by the General Assembly of the State of South Carolina:

**Bond, arresting law enforcement agency to provide necessary information**

SECTION 1. Section 17‑15‑30 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

 “Section 17‑15‑30. (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, a court may, on the basis of available information, consider the nature and circumstances of an offense charged and an accused’s:

 (1) family ties;

 (2) employment;

 (3) financial resources;

 (4) character and mental condition;

 (5) length of residence in the community;

 (6) record of convictions; and

 (7) record of flight to avoid prosecution or failure to appear at other court proceedings.

 (B) A court shall consider, if available:

 (1) an accused’s criminal record;

 (2) any charges pending against an accused at the time release is requested;

 (3) all incident reports generated as a result of an offense charged; and

 (4) whether an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.

 (C)(1) Prior to or at the time of a hearing, the arresting law enforcement agency shall provide the court with the following information, if available:

 (a) the accused’s criminal record;

 (b) any charges pending against the accused at the time release is requested;

 (c) all incident reports generated as a result of the offense charged; and

 (d) any other information that will assist the court in determining conditions of release.

 (2) The arresting law enforcement agency shall inform the court if any of the information is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement agency to provide the court with the information does not constitute grounds for the postponement or delay of the person’s hearing.

 (D) A court hearing these matters has contempt powers to enforce the provisions of this section.”

**Bond, reconsideration by circuit court of bond set by summary court**

SECTION 2. Chapter 15, Title 17 of the 1976 Code is amended by adding:

 “Section 17‑15‑55.(A)(1) The circuit courts, at their discretion, may review and reconsider bond for general sessions offenses set by summary court judges. Also, the circuit courts may consider motions regarding reconsideration of bond for general sessions offenses set by summary court judges upon motions filed with the clerks of court. Hearings on these motions must be scheduled. The rules of evidence do not apply to bond hearings.

 (2) After a circuit court judge has heard and ruled upon a defendant’s motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court only upon the defendant’s prima facie showing of a material change in circumstances which relate to the factors provided in Section 17‑15‑30, and which have arisen since the prior motion to reconsider. In addition, the circuit court may hear further defense motions to reconsider based on the length of time the defendant has been held for trial after six months. The chief judge shall schedule a hearing or if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstances. Information regarding the defendant’s guilt or innocence does not qualify as a change in circumstances for purposes of reconsidering bond absent the solicitor’s consent.

 (B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

 (2) After a circuit court judge has heard and ruled upon the state’s motion to reconsider a bond set by a summary court judge, further state motions to reconsider may be heard by the circuit court only upon the state’s prima facie showing of a material change in circumstances which have arisen since the prior motion to reconsider. The chief judge shall schedule a hearing or if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstances.

 (3) If the state’s motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty‑eight hours of receiving service of the state’s motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant’s motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety.”

**Bond, person charged with burglary in the first degree to have bond set in summary court**

SECTION 3. Section 17‑15‑10 of the 1976 Code is amended to read:

 “Section 17‑15‑10.(A) Any person charged with a noncapital offense triable in either the magistrates, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release:

 (1) require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;

 (2) place the person in the custody of a designated person or organization agreeing to supervise him;

 (3) place restrictions on the travel, association, or place of abode of the person during the period of release;

 (4) impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

 (B) Any person charged with the offense of burglary in the first degree pursuant to Section 16‑11‑311 may have his bond hearing for that charge in summary court unless the solicitor objects.”

**Bond, retroactive provision of Act 115 of 2012**

SECTION 4. The provisions of Section 1 of Act 115 of 2012 which amended Section 17‑15‑20 of the 1976 Code and allow sureties to be relieved of an appearance bond under certain designated circumstances are retroactive and apply to all existing and future appearance bonds.

**Savings clause**

SECTION 5. Except as provided in SECTION 4, the repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Bond, surety relieved of liability, exception for circuit court order**

SECTION 6. Section 38‑53‑50 of the 1976 Code, as last amended by Act 346 of 2008, is further amended to read:

 “Section 38‑53‑50.(A) A surety desiring to be relieved on a bond for good cause shall file with the clerk of court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor’s office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and notify all parties of the hearing date. At the time of the filing of the motion, a fee of twenty dollars must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk’s office. The fee will cover the cost of copies of the motion required by the surety.

 (B) If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety, within three business days following recommitment, must file with the detention facility and the court an affidavit clocked in with the clerk of court on a form provided by the Division of Court Administration stating the facts to support the surrender of the defendant for good cause. Nonpayment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant. When the defendant and the affidavit are presented at the appropriate detention facility, the facility shall take custody of the defendant. When the affidavit is filed with the court, the surety also shall file a motion to be relieved on the bond pursuant to subsection (A). A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16.

 (C) If the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed and served on the defendant, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court within fourteen calendar days of the filing of the affidavit, or, if there is no term of court within the fourteen day period, at the ensuing term of court.

 (D) After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.”

**Time effective**

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 29th day of June, 2012.

Approved the 29th day of June, 2012.

\_\_\_\_\_\_\_\_\_\_