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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2469 Session of  
2014

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INTRODUCED BY CUTLER, CALTAGIRONE, THOMAS, TOEPEL, MILLARD,  
SWANGER, NEUMAN, WATSON, SACCONI, SAYLOR, EVERETT, CARROLL,  
MAHONEY, REGAN, BRIGGS, TOOHL, ROCK, R. MILLER, GODSHALL,  
MICOZZIE, SCAVELLO, KORTZ, GILLESPIE, BAKER, TAYLOR, HARHART,  
KILLION, ELLIS, MENTZER, FARINA, FLYNN, SABATINA, HANNA,  
D. COSTA, BARBIN, ADOLPH, GINGRICH, COHEN, MURT, M. DALEY,  
WHITE, HELM, O'BRIEN, CAUSER, KULA, GIBBONS, HENNESSEY,  
CORBIN, SNYDER, PYLE, READSHAW, KOTIK, GALLOWAY, P. DALEY,  
M. K. KELLER, KAUFFMAN, AUMENT, MARSHALL, PICKETT, LONGIETTI,  
DeLUCA, STEVENSON AND MAJOR, SEPTEMBER 10, 2014

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REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 10, 2014

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in bonds and  
3 recognizances, amending provisions relating to professional  
4 bondsmen; and providing for authorization to conduct business  
5 within each county, for forfeited undertaking and for private  
6 cause of action.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. The heading of Subchapter B of Chapter 57 of  
10 Title 42 of the Pennsylvania Consolidated Statutes is amended to  
11 read:

12 SUBCHAPTER B

13 [PROFESSIONAL] BAIL BONDSMEN

14 Section 2. Sections 5741 and 5742 of Title 42 are amended to  
15 read:

16 § 5741. Definitions.

1 The following words and phrases when used in this subchapter  
2 shall have, unless the context clearly indicates otherwise, the  
3 meanings given to them in this section:

4 "Bail bondsman." Any person that engages in the business of  
5 giving bail as a surety for compensation.

6 "Department." The Insurance Department of the Commonwealth.

7 "Insurer." As defined in section 601-A of the act of May 17,  
8 1921 (P.L.789, No.285), known as The Insurance Department Act of  
9 1921.

10 "Office of the clerk." The office of the clerk of the court  
11 of common pleas of each judicial district in which a  
12 [professional bondsman] person engages in the business of a  
13 [professional] bail bondsman.

14 ["Professional bondsman." Any person, other than a fidelity  
15 or surety company or any of its officers, agents, attorneys, or  
16 employees, authorized to execute bail bonds or to solicit  
17 business on its behalf, who:

18 (1) engages in the business of giving bail, giving or  
19 soliciting undertakings, or giving or soliciting indemnity or  
20 counterindemnity to sureties on undertakings; or

21 (2) within a period of 30 days has become a surety, or  
22 has indemnified a surety, for the release on bail of a  
23 person, with or without a fee or compensation, or promise  
24 thereof, in three or more matters not arising out of the same  
25 transaction.]

26 "Surety." A person who pledges security, whether or not for  
27 compensation, in exchange for the release from custody of a  
28 person charged with a crime prior to adjudication.

29 § 5742. [Registration and licensure] Licensure required.

30 [(a) General rule.--No professional bondsman shall become

1 surety on any undertaking, and no person shall engage in or  
2 continue to engage in business as a professional bondsman,  
3 unless he has been registered and is currently licensed as a  
4 professional bondsman by the Insurance Department as provided in  
5 this subchapter and has filed a copy of his license in the  
6 office of the clerk in the manner prescribed by general rules.

7 (b) Form of application.--Every application for registration  
8 and licensure as a professional bondsman shall be made in  
9 writing upon such form as may be prescribed by regulations  
10 promulgated by the Insurance Department.] No person shall engage  
11 in, or continue to engage in, the business of a bail bondsman  
12 unless the person has been licensed by the department as an  
13 insurance producer under Article VI-A of the act of May 17, 1921  
14 (P.L.789, No.285), known as The Insurance Department Act of  
15 1921, and possesses a casualty line of authority.

16 Section 3. Section 5743 of Title 42 is repealed:

17 [§ 5743. Issuance of license.

18 (a) General rule.--The Insurance Department, upon receipt  
19 of:

20 (1) an application for registration and licensure as a  
21 professional bondsman; and

22 (2) an annual license fee of \$50;

23 shall, if it approves the application, register the applicant as  
24 a professional bondsman and issue him a license.

25 (b) Duration.--Each license shall be valid for one year  
26 following the date of issue.

27 (c) Nontransferable.--No license issued under this  
28 subchapter shall be assigned or transferred.]

29 Section 4. Title 42 is amended by adding a section to read:

30 § 5743.1. Authorization to conduct business within each county.

1 A bail bondsman shall only be authorized to conduct business  
2 in a county when the bail bondsman provides all of the following  
3 documents to the office of the clerk:

4 (1) A copy of the license issued to the bail bondsman by  
5 the department.

6 (2) A statement identifying an office address for  
7 service of legal process.

8 (3) A qualifying power of attorney issued by an insurer  
9 authorizing the bail bondsman as a producer on behalf of the  
10 insurer. The qualifying power of attorney must set forth, in  
11 clear and unambiguous terms, the maximum monetary authority  
12 of the bail bondsman per bond.

13 Section 5. Sections 5744, 5745 and 5746 of Title 42 are  
14 amended to read:

15 § 5744. Office.

16 No [license shall be issued to, and no] privileges or rights  
17 conferred by any license issued under the provisions of this  
18 subchapter shall be exercised by[, any professional] any bail  
19 bondsman, unless such [professional] bail bondsman has and shall  
20 thereafter maintain an office [in the county in which he  
21 conducts or intends to conduct his business.] that is  
22 geographically located in this Commonwealth and eligible to  
23 receive original process and other legal papers as set forth by  
24 the Pennsylvania Rules of Civil Procedure or other applicable  
25 court rule.

26 § 5745. [Refusal to grant or renew license] Suspension or  
27 nonrenewal of license for unpaid bail forfeitures.

28 [The Insurance Department, upon the written request of any  
29 applicant for a license or for renewal thereof whose application  
30 therefor has been refused, shall afford such applicant a hearing

1 on the question of the grant or renewal of a license.]

2 (a) General rule.--Where the court of common pleas for the  
3 county where the bail bondsman is authorized to conduct business  
4 has been unable to collect unpaid forfeitures after a period of  
5 six months, the court, upon petition of the county solicitor or  
6 district attorney, shall issue an order directing the department  
7 to:

8 (1) prohibit the renewal of a license of the bail  
9 bondsman; or

10 (2) immediately suspend the license of the bail  
11 bondsman.

12 (b) Notice to bail bondsman and insurer.--Prior to the  
13 issuance of an order to suspend or nonrenew a license, the bail  
14 bondsman and insurer who issued the qualifying power of attorney  
15 shall both be given advance notice by certified mail, return  
16 receipt requested. The notice shall specify all of the  
17 following:

18 (1) The amount of forfeitures owed to the county, if  
19 applicable.

20 (2) How, when and where the notice can be contested.

21 (3) That the grounds for contesting the notice shall be  
22 limited to mistakes of fact. Mistakes of fact shall be  
23 limited to errors in the amount of forfeitures owed or  
24 mistaken identity of the bail bondsman as the person who was  
25 subjected to the criminal conviction or civil determination  
26 of insolvency.

27 (4) That an order to the department to automatically  
28 suspend or nonrenew the license will occur in all cases 30  
29 days after delivery of the notice by certified mail, return  
30 receipt requested, unless the amount of forfeitures is paid,

1 a periodic payment schedule is approved by the court or the  
2 individual is excused from payment due to a mistake of fact.

3 (c) Order.--The following shall apply:

4 (1) Thirty days after the issuance of the notice, if the  
5 bail bondsman has not paid the amount of forfeitures due, the  
6 court shall direct or cause an order to be issued to the  
7 department to suspend or deny renewal of a license. Upon  
8 receipt, the department shall immediately comply with the  
9 order or directive. The department shall have no authority to  
10 stay implementation of the order or to hold a hearing except  
11 in cases of mistaken identity. A copy of the order issued by  
12 the court shall be served upon the bail bondsman and insurer  
13 by certified mail, return receipt requested.

14 (2) To contest any order, the bail bondsman or insurer  
15 must appear before the court no later than ten days after  
16 issuance of the order. The grounds for contesting shall be  
17 limited to mistakes of fact. If it is determined, after a  
18 hearing by the court, that a mistake of fact has occurred,  
19 the action shall be modified accordingly within ten days.

20 (3) A person whose license has been suspended or not  
21 renewed by the department pursuant to this section is  
22 prohibited from engaging in the business of a bail bondsman  
23 in any county in this Commonwealth.

24 (d) Implementation.--The department may promulgate  
25 regulations necessary for the administration of this section.

26 (e) Construction.--This section shall supersede any  
27 conflicting provision in any other State law unless the  
28 provision specifically references this section and provides to  
29 the contrary.

30 (f) Immunity.--The court, department, county solicitor,

1 district attorney or any employee of any of these entities, or  
2 any person appointed by these entities, shall not be subject to  
3 civil or criminal liability for carrying out its duties under  
4 this section.

5 § 5746. Suspension or revocation of [license] authority to  
6 conduct business in a county.

7 (a) General rule.--Upon petition of the district attorney or  
8 [by any interested person] county solicitor to suspend or revoke  
9 the [license issued to any licensee] authority of a bondsman to  
10 conduct business in a county that has been granted under this  
11 subchapter, a rule shall issue out of the court of common pleas,  
12 returnable not less than ten days after the issuance thereof. It  
13 shall be sufficient service of the said rule upon any [licensee  
14 to leave a copy thereof at] bail bondsman to send by certified  
15 mail, return receipt requested, to the address filed by the  
16 [licensee] bail bondsman with the office of the clerk pursuant  
17 to this subchapter.

18 (b) Grounds for suspension or revocation.--Any [license  
19 issued] authority granted under the provisions of this  
20 subchapter may be suspended, by any court of common pleas for a  
21 period less than the unexpired portion of the period for which  
22 such license shall have been issued, or may be revoked for good  
23 cause, or for any one or more of the following causes:

24 (1) Violation of any of the provisions of this  
25 subchapter.

26 (2) Fraudulently obtaining a license under the  
27 provisions of this subchapter.

28 (3) Upon conviction for any criminal offense under the  
29 laws of this Commonwealth or under the laws of the United  
30 States or any other jurisdiction.

1 (4) Upon being adjudged [a] bankrupt or insolvent.

2 (5) Failing to pay any judgment rendered on any  
3 forfeited undertaking in any court of competent jurisdiction.

4 (6) Any interference or attempted interference with the  
5 administration of justice.

6 Section 6. Section 5747 of Title 42 is repealed:

7 [§ 5747. Statements by fidelity or surety companies.

8 Any fidelity or surety company, authorized to act as surety  
9 within this Commonwealth, may execute an undertaking as surety  
10 by the hand of an officer, employee, agent, or attorney,  
11 authorized thereto by a resolution of its board of directors, a  
12 certified copy of which, under its corporate seal, shall be  
13 filed with the undertaking. Fidelity or surety companies engaged  
14 in the business of entering bail shall file, with the clerk of  
15 the court of common pleas and with the district attorney of each  
16 county in which bail is entered, a statement, quarterly on which  
17 shall appear a summary of all bail entered by such company  
18 during the previous quarter, together with the compensation  
19 charged therefor.]

20 Section 7. Title 42 is amended by adding a section to read:

21 § 5747.1. Forfeited undertaking.

22 (a) General rule.--If a defendant in a criminal prosecution  
23 fails to appear for any scheduled court proceeding, the  
24 defendant's bail may be revoked and notice of revocation shall  
25 serve as notice of intent to forfeit the bail of the defendant.  
26 Such notice or order of revocation shall be sent by the office  
27 of the clerk to the defendant, surety or bail bondsman and  
28 insurer who has issued the qualifying power of attorney for the  
29 bail bondsman by certified mail, return receipt requested.

30 (b) Payment.--The following shall apply:



1           (1) Ninety days from the date of the delivery of the  
2 notice of revocation or order of revocation, the revocation  
3 shall become a judgment of forfeiture, payment of which shall  
4 be immediately required by the defendant or surety. Failure  
5 of a bail bondsman to make a timely payment of a forfeiture  
6 judgment shall result in the district attorney or county  
7 solicitor commencing proceedings to suspend or nonrenew the  
8 license of the bail bondsman otherwise consistent with  
9 section 5746 (relating to suspension or revocation of  
10 authority to conduct business in a county).

11           (2) Payment of any forfeited undertaking shall be made  
12 directly to the office of the clerk not later than the close  
13 of business on the 91st day following the issuance of the  
14 notice of revocation. If the defendant has been recovered and  
15 placed into custody through the efforts of the bail bondsman  
16 or proof has been provided to the court that the defendant  
17 was discovered to be in custody in another jurisdiction by  
18 the bail bondsman prior to the 91st day, no payment of the  
19 forfeited undertaking shall be required. If the defendant is  
20 placed into custody, the court shall set aside the bail  
21 revocation and may release the defendant with the  
22 reinstitution of bail pursuant to the Pennsylvania Rules of  
23 Criminal Procedure. The bail bondsman shall not be continued  
24 by the court as surety on reinstated bail unless a written  
25 consent is signed by the bail bondsman agreeing to such  
26 extension of suretyship.

27           (3) Failure to render payment of the forfeited  
28 undertaking by close of business on the 91st day shall bar  
29 any right of remission to collect funds pursuant to a  
30 forfeited undertaking.

1           (4) The office of the clerk shall provide a summary  
2 quarterly statement of all overdue forfeited undertakings  
3 which have not been paid by each bail bondsman and  
4 insurer. The bail bondsman or insurer shall be afforded 30  
5 days from the date of the statement to render payment of the  
6 forfeited undertakings. Failure to render payment by close of  
7 business on the 31st day shall result in suspension of the  
8 ability to conduct business of both the bail bondsman and the  
9 insurer in that judicial district until such time as payment  
10 is rendered in full. The bail bondsman may be subject to  
11 formal suspension or nonrenewal proceedings pursuant to  
12 section 5746. In addition, the insurer may be subjected to  
13 further administrative penalties, to be determined by the  
14 department, consistent with the act of July 22, 1974  
15 (P.L.589, No.205), known as the Unfair Insurance Practices  
16 Act, or other applicable law.

17           (5) If the defendant is recovered after the 91st day  
18 following the forfeiture, a surety may petition the court in  
19 which the revocation and forfeiture occurred to remit all or  
20 a portion of the funds collected in exchange for the absence  
21 of the defendant. The court shall remit payment as follows:

22           (i) If the defendant is recovered between the 91st  
23 day and six months after the order of revocation or  
24 forfeiture, the surety shall recover the full value of  
25 the forfeited amount of the bond, less an administrative  
26 fee in the amount of \$250.

27           (ii) If the defendant is recovered between six  
28 months and one year after the order of revocation or  
29 forfeiture, the surety shall recover 80% of the value of  
30 the forfeited amount of the bond.

1           (iii) If the defendant is recovered between one and  
2           two years after the order of revocation or forfeiture,  
3           the surety shall recover 50% of the value of the  
4           forfeited amount of the bond.

5           (6) No third-party surety shall be responsible to render  
6           payment on a forfeited undertaking if the revocation of bail  
7           is sought for failure of the defendant to comply with the  
8           conditions of the defendant's release other than appearance.  
9           Any violation of performance conditions by a defendant shall  
10           be deemed as a violation of a court order, subject to a  
11           conviction for indirect contempt of court for violating a  
12           court order instituting terms and conditions of release of  
13           the defendant and all associated penalties.

14       Section 8. Section 5748 of Title 42 is repealed:

15   [§ 5748. Maximum premiums.

16       (a) General rule.--No professional bondsman shall charge a  
17       premium or compensation for acting as surety on any undertaking  
18       in excess of 10% for the first \$100, and 5% for each additional  
19       \$100 of such undertaking.

20       (b) Civil penalty.--In any action brought to recover an  
21       overcharge by a professional bondsman, where such overcharge is  
22       proved, the professional bondsman shall be liable to pay treble  
23       damages therefor and reasonable counsel fees.]

24       Section 9. Title 42 is amended by adding a section to read:

25   § 5748.1. Private cause of action.

26       (a) Self-policing.--Any bail bondsman or insurer who  
27       determines that a competitor has engaged in an activity that is  
28       in violation of any provision of this chapter may commence a  
29       cause of action seeking monetary damages, declaratory judgment  
30       or injunctive relief from the court of common pleas of the

1 county in which the violation occurred. The violation must be  
2 proven by clear and convincing evidence.

3 (b) Frivolous actions.--Any bail bondsman or insurer who  
4 wrongfully commences a baseless action, knowingly without any  
5 merit or evidence, shall be subject to actual damages in the  
6 amount of the costs of the defense of the suit and punitive  
7 damages of an amount equal to those costs that constitute actual  
8 damages.

9 Section 10. Section 5749 of Title 42 is amended to read:

10 § 5749. Prohibitions and penalties.

11 (a) Licensing.--Any person who engages in the business [as]  
12 of a [professional] bail bondsman without being registered and  
13 licensed in accordance with the provisions of this subchapter,  
14 or who engages in such business while his license is suspended  
15 or revoked, commits a misdemeanor of the third degree.

16 (b) Overcharging.--Any person charging or receiving directly  
17 or indirectly any greater compensation for acting as a  
18 [professional] bail bondsman than is provided by this subchapter  
19 commits a summary offense.

20 (c) Soliciting.--Any person who accepts any fee or  
21 compensation for obtaining a bondsman or a recognizance commits  
22 a summary offense.

23 (d) Other violations.--Any person who violates any section  
24 of this subchapter for which no specific penalty other than  
25 suspension or revocation of license is provided commits a  
26 summary offense.

27 (e) Public officials.--The following shall apply:

28 (1) Any law enforcement officer, any employee of a penal  
29 institution, or any other system or related personnel, who  
30 has, directly or indirectly, any pecuniary interest in or

1 derives any profit from the bonding business or activity of a  
2 [professional] bail bondsman commits a summary offense.

3 (2) (i) Notwithstanding paragraph (1), it shall not be  
4 unlawful for a person who serves as a law enforcement  
5 officer, employee of a penal institution or any other  
6 system or related personnel to engage in the service of  
7 aiding a bail bondsman in fugitive recovery so long as  
8 all of the following apply:

9 (A) The services are not rendered while the  
10 person is performing the person's duties in the  
11 person's capacity as a State, county or city.

12 (B) The person is compensated separately.

13 (ii) Any person who engages in fugitive recovery  
14 while in the service of the State, county or city or  
15 engages in fugitive recovery in uniform or under badge of  
16 the person's office commits a misdemeanor of the second  
17 degree.

18 (f) Public solicitation.--Any [professional] bail bondsman  
19 who solicits business in any of the courts or on the premises of  
20 any tribunal of this Commonwealth, including any tribunal  
21 conducted by a magisterial district judge, commits a summary  
22 offense.

23 Section 11. A person licensed as a professional bondsman  
24 prior to the effective date of this act shall be licensed as an  
25 insurance producer in accordance with Article VI-A of the act of  
26 May 17, 1921 (P.L.789, No.285), known as The Insurance  
27 Department Act of 1921.

28 Section 12. This act shall take effect in 120 days.