

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1441 Session of 2014

INTRODUCED BY ALLOWAY, STACK, ROBBINS, BLAKE, McILHINNEY, WOZNIAK, FARNESE, SCHWANK, YUDICHAK, EICHELBERGER, BOSCOLA, PILEGGI, KITCHEN, RAFFERTY, BREWSTER, SOLOBAY, KASUNIC AND BAKER, JUNE 23, 2014

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, SEPTEMBER 24, 2014

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:

SUBCHAPTER B

[PROFESSIONAL] BAIL BONDSMEN

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

16 § 5741. Definitions.

17 The following words and phrases when used in this subchapter
18 shall have, unless the context clearly indicates otherwise, the

1 meanings given to them in this section:

2 "Bail bondsman." Any person or entity licensed as required <--
3 under this subchapter that engages in the business of giving
4 bail as a surety for compensation.

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

6 "Insurer." A surety, insurance or fidelity company <--
7 authorized to conduct business by the department and approved to
8 underwrite bail bonds. AS DEFINED IN SECTION 601-A OF THE ACT OF <--
9 MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE INSURANCE
10 DEPARTMENT ACT OF 1921.

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

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

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

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

27 "SURETY." ANY PERSON WHO PLEDGES SECURITY, WHETHER OR NOT <--
28 FOR COMPENSATION, IN EXCHANGE FOR THE RELEASE FROM CUSTODY OF A
29 PERSON CHARGED WITH A CRIME PRIOR TO ADJUDICATION.

30 § 5742. [Registration and licensure] Licensure required.

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

8 (b) Form of application.--Every application for registration
9 and licensure as a professional bondsman shall be made in
10 writing upon such form as may be prescribed by regulations
11 promulgated by the Insurance Department.] No person shall engage
12 in, or continue to engage in, THE business providing bail bonds <--
13 to the general public OF A BAIL BONDSMAN, unless the person has <--
14 been licensed by the department as an insurance producer under
15 ARTICLE VI-A OF the act of May 17, 1921 (P.L.789, No.285), known <--
16 as The Insurance Department Act of 1921, AND POSSESSES A <--
17 CASUALTY LINE OF AUTHORITY.

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

19 [§ 5743. Issuance of license.

20 (a) General rule.--The Insurance Department, upon receipt
21 of:

22 (1) an application for registration and licensure as a
23 professional bondsman; and

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

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

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

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

1 Section 4. Title 42 is amended by adding a section to read:
2 § 5743.1. Authorization to conduct business within each county.

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

6 (1) A copy of the license issued to the bail bondsman by
7 the department.

8 (2) A statement identifying an office address for
9 service of legal process.

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

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

17 § 5744. Office.

18 No [license shall be issued to, and no] privileges or rights
19 conferred by any license issued under the provisions of this
20 subchapter shall be exercised by[, any professional] any bail
21 bondsman, unless such [professional] bail bondsman has and shall

22 thereafter maintain ~~an] a bona fide~~ office [in the county in <--
23 which he conducts or intends to conduct his business] THAT IS <--
24 GEOGRAPHICALLY LOCATED IN THIS COMMONWEALTH AND eligible to
25 receive service of legal process in this Commonwealth. ORIGINAL <--
26 PROCESS AND OTHER LEGAL PAPERS AS SET FORTH BY THE PENNSYLVANIA
27 RULES OF CIVIL PROCEDURE OR OTHER APPLICABLE COURT RULE.

28 § 5745. ~~Refusal to grant or renew license, suspension and~~ <--

29 ~~revocation.~~ [REFUSAL TO GRANT OR RENEW LICENSE] <--

30 SUSPENSION OR NONRENEWAL OF LICENSE FOR UNPAID

1 FORFEITURES.

2 [The Insurance Department, upon the written request of any
3 applicant for a license or for renewal thereof whose application
4 therefor has been refused, shall afford such applicant a hearing
5 on the question of the grant or renewal of a license.]

6 (a) General rule.--Where the court of common pleas for the
7 county where the bail bondsman is authorized to conduct business
8 has been unable to collect unpaid forfeitures after a period of
9 six months, the court, upon petition of the county solicitor OR <--
10 DISTRICT ATTORNEY, shall issue an order directing the department
11 to:

12 (1) prohibit the issuance or renewal of a license of the <--
13 bail bondsman; or

14 (2) require the suspension of IMMEDIATELY SUSPEND the <--
15 license of the bail bondsman.

16 (b) Notice to bail bondsman and insurer.--The following
17 shall apply:

18 (1) Prior to the issuance of an order to suspend, OR <--
19 nonrenew or deny a license, the bail bondsman and insurer who <--
20 issued the qualifying power of attorney shall BOTH be given <--
21 advance notice BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. <--

22 The notice shall specify all of the following:

23 (i) The amount of forfeitures owed to the county, if
24 applicable.

25 (ii) How, when and where the notice can be
26 contested.

27 (iii) That the grounds for contesting the notice
28 shall be limited to mistakes of fact. Mistakes of fact
29 shall be limited to errors in the amount of forfeitures
30 owed or mistaken identity of the bail bondsman as the

1 person who was subjected to the criminal conviction or
2 civil determination of insolvency.

3 (iv) That an order to the ~~licensing authority~~ <--
4 DEPARTMENT to automatically suspend, ~~nonrenew~~ or deny the <--
5 license will occur in all cases ~~60~~ 30 days after issuance <--
6 DELIVERY of the notice BY CERTIFIED MAIL, RETURN RECEIPT <--
7 REQUESTED, unless the amount of forfeitures is paid, a
8 periodic payment schedule is approved by the court or the
9 individual is excused from payment due to a mistake of
10 fact.

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

12 (1) Thirty days after the issuance of the notice, if the
13 bail bondsman has not paid the amount of forfeitures due, the
14 court shall direct or cause an order to be issued to the
15 department to suspend or deny ~~the issuance or renewal of a~~ <--
16 license. Upon receipt, the department shall immediately
17 comply with the order or directive. The department shall have
18 no authority to stay implementation of the order or to hold a
19 hearing except in cases of mistaken identity. A copy of the
20 order issued by the court shall be served upon the bail
21 bondsman and insurer by certified mail, return receipt
22 requested.

23 (2) To contest any order, the bail bondsman or ~~surety~~ <--
24 INSURER must appear before the court no later than ten days <--
25 after issuance of the order. The grounds for contesting shall
26 be limited to mistakes of fact. If it is determined, after a
27 hearing by the court, that a mistake of fact has occurred,
28 the action shall be modified accordingly within ten days.

29 ~~(3) Any order issued by the court to suspend, nonrenew <--~~
30 or deny the license shall be applicable to all counties where

1 ~~the bail bondsman conducts business.~~

2 (3) A PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR <--
3 NONRENEWED BY THE DEPARTMENT PURSUANT TO THIS SECTION IS
4 PROHIBITED FROM ENGAGING IN THE BUSINESS OF A BAIL BONDSMAN
5 IN ANY COUNTY OF THIS COMMONWEALTH.

6 (d) Implementation.--The department may promulgate
7 regulations and issue directives to coordinate and carry out the <--
8 provisions NECESSARY FOR THE ADMINISTRATION of this section. <--

9 (e) Construction.--This section shall supersede any
10 conflicting provision in any other State law unless the
11 provision specifically references this section and provides to
12 the contrary.

13 ~~(f) Immunity. The court, the department or any employee of~~ <--
14 ~~any of these entities, or any person appointed by these~~
15 ~~entities, shall not be subject to civil or criminal liability~~
16 ~~for carrying out its duties under this section.~~

17 (F) IMMUNITY.--THE COURT, THE DEPARTMENT, THE COUNTY <--
18 SOLICITOR AND THE DISTRICT ATTORNEY, AND ANY EMPLOYEE OR
19 APPOINTEE OF THESE ENTITIES, SHALL NOT BE SUBJECT TO CIVIL OR
20 CRIMINAL LIABILITY FOR CARRYING OUT THE ENTITY'S DUTIES UNDER
21 THIS SECTION. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE
22 CIVIL OR CRIMINAL LIABILITY OF A BAIL BONDSMAN OR AN EMPLOYEE OR
23 AGENT THEREOF.

24 § 5746. Suspension or revocation of [license] authority to
25 conduct business in a county.

26 (a) General rule.--Upon petition of the district attorney or
27 **[by any interested person]** COUNTY SOLICITOR to suspend or revoke <--
28 the [license issued to any licensee] authority OF A BAIL <--
29 BONDSMAN to conduct business in a county of any bail bondsman <--
30 THAT HAS BEEN granted under this subchapter, a rule shall issue <--

1 out of the court of common pleas, returnable not less than ten
2 days after the issuance thereof. It shall be sufficient service
3 of the said rule upon any [licensee to leave a copy thereof at]
4 bail bondsman to send by certified mail, return receipt
5 requested, to the address filed by the [licensee] bail bondsman
6 with the OFFICE OF THE clerk pursuant to this subchapter. <--

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

13 (1) Violation of any of the provisions of this
14 subchapter.

15 (2) Fraudulently obtaining a license under the
16 provisions of this subchapter.

17 (3) Upon conviction for any criminal offense under the
18 laws of this Commonwealth or under the laws of the United
19 States or any other jurisdiction.

20 (4) Upon being adjudged [a] bankrupt or insolvent. <--

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

23 (6) Any interference or attempted interference with the
24 administration of justice.

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

26 [§ 5747. Statements by fidelity or surety companies.

27 Any fidelity or surety company, authorized to act as surety
28 within this Commonwealth, may execute an undertaking as surety
29 by the hand of an officer, employee, agent, or attorney,
30 authorized thereto by a resolution of its board of directors, a

1 certified copy of which, under its corporate seal, shall be
2 filed with the undertaking. Fidelity or surety companies engaged
3 in the business of entering bail shall file, with the clerk of
4 the court of common pleas and with the district attorney of each
5 county in which bail is entered, a statement, quarterly on which
6 shall appear a summary of all bail entered by such company
7 during the previous quarter, together with the compensation
8 charged therefor.]

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

10 § 5747.1. Forfeited undertaking.

11 (a) General rule.--If a defendant in a criminal prosecution
12 fails to appear for any scheduled court proceeding, the
13 defendant's bail may be revoked and notice of revocation shall
14 serve as notice of intent to forfeit the bail of the defendant.
15 Such notice or order of revocation shall be sent by the OFFICE <--
16 OF THE clerk of court to the defendant, SURETY OR bail bondsman <--
17 and insurer who has issued the qualifying power of attorney for
18 the bail bondsman, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. <--

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

20 (1) Ninety days from the date of DELIVERY OF the notice <--
21 of revocation or order of revocation, the revocation shall
22 become a judgment of forfeiture, payment of which shall be
23 immediately required by the defendant or surety. Failure of a
24 bail bondsman to make a timely payment of a forfeiture
25 judgment shall result in the clerk of court's commencing <--
26 suspension or revocation of license proceedings with the
27 department as set forth under DISTRICT ATTORNEY OR COUNTY <--
28 SOLICITOR COMMENCING PROCEEDINGS TO SUSPEND OR REVOKE THE
29 AUTHORITY OF THE BAIL BONDSMAN OTHERWISE CONSISTENT WITH
30 section 5746 (relating to suspension or revocation of

1 authority to conduct business in a county).

2 (2) Payment of any forfeited undertaking shall be made
3 directly to the OFFICE OF THE clerk ~~of courts~~ not later than <--
4 the close of business on the 91st day following the issuance
5 of the notice of revocation. If the defendant has been
6 recovered and placed into custody through the efforts of the
7 bail bondsman or ~~discovered to be in custody~~ PROOF HAS BEEN <--
8 PROVIDED TO THE COURT THAT THE DEFENDANT HAS BEEN DISCOVERED
9 TO BE IN CUSTODY IN ANOTHER JURISDICTION by the bail bondsman
10 prior to the 91st day, no payment of the forfeited
11 undertaking shall be required. If the defendant is placed
12 into custody, the court shall ~~determine whether the bail~~ <--
13 ~~revocation shall be set aside~~ THE BAIL REVOCATION AND MAY <--
14 RELEASE THE DEFENDANT with the reinstatement of bail pursuant
15 to the ~~rules of criminal procedure~~ PENNSYLVANIA RULES OF <--
16 CRIMINAL PROCEDURE. The bail bondsman shall not ~~continue~~ BE <--
17 CONTINUED BY THE COURT as surety on reinstated bail unless a
18 written consent is signed by the bail bondsman agreeing to
19 such extension of suretyship.

20 (3) Failure to render payment of the forfeited
21 undertaking by close of business on the 91st day shall bar
22 any right of remission to collect funds pursuant to a
23 forfeited undertaking.

24 (4) The OFFICE OF THE clerk ~~of courts~~ shall provide a <--
25 summary quarterly statement of all overdue forfeited
26 undertakings which have not been paid by each bail bondsman
27 and ~~corporate surety~~ insurer. The bail bondsman or ~~corporate~~ <--
28 ~~surety~~ insurer shall be afforded 30 days from the date of the
29 statement to render payment of the forfeited undertakings.
30 Failure to render payment by close of business on the 31st

1 day shall result in suspension of the ability to conduct
2 business of both the bail bondsman and the ~~corporate surety~~ <--
3 insurer in that judicial district until such time as payment
4 is rendered in full. ~~Both the~~ THE bail bondsman and the <--
5 ~~corporate surety insurer~~ may be subject to formal suspension
6 or ~~termination~~ NONRENEWAL proceedings pursuant to section <--
7 5746. In addition, the ~~surety~~ INSURER may be subjected to <--
8 further administrative penalties, to be determined by the
9 department, consistent with the act of July 22, 1974
10 (P.L.589, No.205), known as the Unfair Insurance Practices
11 Act, OR OTHER APPLICABLE LAW. <--

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

17 (i) If the defendant is recovered between the 91st
18 day and six months after the order of revocation or
19 forfeiture, the surety shall recover the full value of
20 the forfeited amount of the bond, less an administrative
21 fee in the amount of \$250.

22 (ii) If the defendant is recovered between six
23 months and one year after the order of revocation or
24 forfeiture, the surety shall recover 80% of the value of
25 the forfeited amount of the bond.

26 (iii) If the defendant is recovered between one and
27 two years after the order of revocation or forfeiture,
28 the surety shall recover 50% of the value of the
29 forfeited amount of the bond.

30 (6) No third-party surety shall be responsible to render

1 payment on a forfeited undertaking if the revocation of bail
2 is sought for failure of the defendant to comply with the
3 conditions of the defendant's release other than appearance.
4 Any violation of performance conditions by a defendant shall
5 be deemed as a violation of a court order, subject to a
6 conviction for indirect contempt of court FOR VIOLATING A <--
7 COURT ORDER INSTITUTING TERMS AND CONDITIONS OF RELEASE OF
8 THE DEFENDANT and all associated penalties.

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

10 [§ 5748. Maximum premiums.

11 (a) General rule.--No professional bondsman shall charge a
12 premium or compensation for acting as surety on any undertaking
13 in excess of 10% for the first \$100, and 5% for each additional
14 \$100 of such undertaking.

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

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

20 § 5748.1. Private cause of action.

21 (a) Self-policing.--Any bail bondsman or ~~surety~~ INSURER who <--
22 determines that a competitor has engaged in an activity that is
23 in violation of any provision of this chapter may commence a
24 cause of action seeking monetary damages, declaratory judgment
25 or injunctive relief from the court of common pleas of the
26 county in which the violation occurred. The violation must be
27 proven by clear and convincing evidence.

28 (b) Frivolous actions.--Any bail bondsman or ~~surety~~ INSURER <--
29 who wrongfully commences a baseless action, knowingly without
30 any merit or evidence, shall be subject to actual damages in the

1 amount of the costs of the defense of the suit and punitive
2 damages of an equal amount to those costs that constitute actual
3 damages.

4 Section 10. Section 5749 of Title 42 is amended to read:
5 § 5749. Prohibitions and penalties.

6 (a) Licensing.--Any person who engages in THE business [as] <--
7 OF a [professional] bail bondsman without being registered and
8 licensed in accordance with the provisions of this subchapter,
9 or who engages in such business while his license is suspended
10 or revoked, commits a misdemeanor of the third degree.

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

15 (c) Soliciting.--Any person who accepts any fee or
16 compensation for obtaining a bondsman or a recognizance commits
17 a summary offense.

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

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

23 (1) Any law enforcement officer, any employee of a penal
24 institution, or any other system or related personnel, who
25 has, directly or indirectly, any pecuniary interest in or
26 derives any profit from the bonding business or activity of a
27 [professional] bail bondsman commits a summary offense.

28 (2) (i) Notwithstanding paragraph (1), it shall not be
29 unlawful for a person who serves as a law enforcement
30 officer, employee of a penal institution or any other

1 system or related personnel to engage in the service of
2 aiding a bail bondsman in fugitive recovery so long as
3 all of the following apply:

4 (A) The services are not rendered while the
5 person is performing the person's duties in the
6 person's capacity as a city, county or State
7 employee.

8 (B) The person is compensated separately.

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

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

19 SECTION 11. A PERSON LICENSED AS A PROFESSIONAL BONDSMAN <--
20 PRIOR TO THE EFFECTIVE DATE OF THIS ACT SHALL BE LICENSED AS AN
21 INSURANCE PRODUCER IN ACCORDANCE WITH ARTICLE VI-A OF THE ACT OF
22 MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE INSURANCE
23 DEPARTMENT ACT OF 1921.

24 Section ~~11~~ 12. This act shall take effect in ~~90~~ 120 days. <--