

SENATE BILL 804

By Haile

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 16, Chapter 3, Part 8; Title 39 and Title 40,  
Chapter 11, relative to bail bonding.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 13, is amended by adding the following as a new section:

It is the duty and authority of the department of commerce and insurance to implement and administer a registration program as part of a regulatory scheme for the practice of bail bonding under title 40, chapter 11.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following section:

**40-11-154.**

As used in this chapter, unless the context otherwise requires:

(1) "Available capacity" is a professional bondsman's capacity reduced by the total amount of bail, expressed in dollars, which the professional bondsman has outstanding and from which the professional bondsman has not been released;

(2) "Capacity" is the total amount of bail, expressed in dollars, on which a professional bondsman may act as surety;

(3) "Department" means the department of commerce and insurance;

(4) "Equity in real estate" is determined by taking the fair market value of the real estate and subtracting from that value all outstanding liens and encumbrances. For purposes of establishing fair market value, either the county

property assessor's appraisal or an opinion of value from a licensed real estate broker may be used;

(5) "Professional bonding agent" means, but is not limited to, a professional bondsman acting individually, or representatives, or employees of any person, firm, partnership, or officers and directors of a corporation, engaged for profit in the business of furnishing bail, making bonds, or entering into undertakings as surety in criminal proceedings, or for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death. "Professional bonding agent" also means persons licensed as limited insurance representatives by the department of commerce and insurance pursuant to title 56, chapter 6, part 1 and the regulations of that department.

(6)

(A) "Professional bondsman" means any person, firm, partnership, or corporation, engaged for profit in the business of furnishing bail, making bonds, or entering into undertakings, as surety, in criminal proceedings, or for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death, before any of the courts of this state, including municipal courts, or securing the payment of fines, judgments, or damages imposed and of costs assessed by those courts upon preliminary or final disposition thereof; and

(B) "Professional bondsman" or "bondsman" includes the agents, representatives, or employees of a professional bondsman, or those acting for the bondsman, whether with or without compensation or salary.

The business of a professional bondsman shall be limited to the acts, transactions, and undertakings enumerated in subdivision (6)(A) and to no others.

SECTION 3. Tennessee Code Annotated, Section 40-11-106(b)(3), is amended by deleting the subdivision and substituting the following:

This subsection (b) shall not be used to prevent a bail bonding agency from posting bond for any individual when the professional bondsman has previously been approved and authorized to make bonds and the professional bondsman has been so authorized by the department.

SECTION 4. Tennessee Code Annotated, Section 40-11-124, is amended by deleting the section and substituting the following:

The clerk, sheriff, municipal courts, and other inferior courts shall be provided a current approved list of professional bondsmen registered and qualified as solvent by the department. No undertaking may be accepted unless the professional bondsman or other surety is registered under this part. Notwithstanding the issuance by an association of a guaranteed arrest or bail bond certificate, as defined in § 40-11-145, professional bondsmen registered with the department pursuant to part 3 of this chapter shall provide proof of such registration to all courts of this state having jurisdiction authorized to admit to bail when appearing before such courts.

SECTION 5. Tennessee Code Annotated, Section 40-11-125(a), is amended by deleting the language:

In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman or other surety may be withheld, withdrawn or suspended by any court if, after investigation, it appears that a bondsman:  
and substituting the language:

In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman may be withheld, withdrawn, or suspended by the department if, after investigation, it appears that a professional bondsman:

SECTION 6. Tennessee Code Annotated, Section 40-11-125(a)(2), is amended by deleting the language "bondsman" and substituting the language "professional bondsman".

SECTION 7. Tennessee Code Annotated, Section 40-11-125, is further amended by deleting subsections (b)-(d) and substituting the following:

(b) If the department withholds, withdraws, or suspends a professional bondsman under this section, then the department must notify the professional bondsman in writing of the action taken. The notice must include a copy of the charges resulting in the department's action. The professional bondsman has the right to the hearing of a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, upon the receipt of such notice.

(c) The department shall remove the offending professional bondsman's name from the approved list and notify all courts in which the professional bondsman is approved to practice.

(d) Any applicant for approval whose application has been denied, withheld, suspended, or revoked may seek review of the department's decision by requesting a contested case hearing, which is conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e)

(1) Notwithstanding the department's authority under this section, a court may deny, withhold, suspend, or revoke an approved professional bondsman's bonding privileges in such court upon the court's determination that the

professional bondsman's conduct is detrimental to the bondsman's client or is disruptive to the court or court proceedings.

(2) The department must be notified of the action of the court, and the department shall strike the offending bondsman from the approved list in accordance with § 40-11-314.

(3) Any bondsman whose bonding privileges has been denied, withheld, suspended, or revoked under subdivision (e)(1) has the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

(4) Any disciplinary action taken against a professional bondsman under this section must be posted to the registry on the department website in accordance with § 40-11-314(i) within one (1) business day of the time such action is taken.

SECTION 8. Tennessee Code Annotated, Section 40-11-127, is amended by deleting the section and substituting the following:

Upon a finding by a district attorney general that a professional bondsman has violated any provision of this chapter, the district attorney general shall file a complaint with the department that details all violations alleged to have been committed by the professional bondsman for further action, if necessary, by the department.

SECTION 9. Tennessee Code Annotated, Section 40-11-133(d), is amended by deleting the language "Any approved bail bondsman in good standing" and substituting the language "Any approved professional bondsman in good standing with the department".

SECTION 10. Tennessee Code Annotated, Section 40-11-133(a), is amended by deleting the language "bail bondsman or surety" and substituting the language "professional bondsman".

SECTION 11. Tennessee Code Annotated, Section 40-11-133(b), is amended by deleting the language "bail bondsman or surety" and substituting the language "professional bondsman".

SECTION 12. Tennessee Code Annotated, Section 40-11-301, is amended by deleting the section.

SECTION 13. Tennessee Code Annotated, Section 40-11-303(a), is amended by deleting the language:

Every professional bondsman licensed to do business in this state shall, not later than January 31 and July 31 of each year, file with the clerk of the circuit or criminal court of each county in which the bondsman is furnishing bail or bonds securing costs and fines, etc., a report of the bondsman's assets and liabilities as of the preceding December 31 and June 30, respectively. This report shall show in detail:

and substituting the language:

Every professional bondsman licensed to do business in this state shall, not later than January 31 and July 31 of each year, file with the department, a report of the professional bondsman's assets and liabilities as of the preceding December 31 and June 30, respectively. This report must show in detail:

SECTION 14. Tennessee Code Annotated, Section 40-11-303(a)(2)-(7), is amended by deleting the words "bondsman" and "bondsman's" wherever they appear and substituting the words "professional bondsman" and "professional bondsman's", as applicable.

SECTION 15. Tennessee Code Annotated, Section 40-11-305, is amended by deleting the words "bondsman" and "bondsman's" wherever they appear and substituting the words "professional bondsman" and "professional bondsman's", as applicable.

SECTION 16. Tennessee Code Annotated, Section 40-11-305, is further amended by designating the existing language as subsection (a) and adding the following as a new subsection:

A judge who conducts an inquiry into the insolvency of a professional bondsman under subsection (a) shall submit the results of any investigation, appraisal, and report upon the value and extent of a professional bondsman's assets and liabilities to the department within seven (7) calendar days of the completion of the inquiry.

SECTION 17. Tennessee Code Annotated, Section 40-11-306, is amended by deleting the words "bondsman" and "bondsman's" wherever they appear and substituting the words "professional bondsman" and "professional bondsman's", as applicable.

SECTION 18. Tennessee Code Annotated, Section 40-11-306, is further amended by adding the following language at the end of the section:

The court shall report any action taken under this section to the department for review to determine if additional disciplinary action is to be taken against the professional bondsman.

SECTION 19. Tennessee Code Annotated, Section 40-11-306, is further amended by designating the existing language as subsection (a) and adding the following as a new subsection:

In addition to the limitations imposed under subsection (a), the department may suspend or revoke the professional bondsman's authority to practice bail bonding in this state upon its review of the findings of the investigation by the court. A person whose authority to practice bail bonding has been suspended or revoked under this subsection ( ) may appeal such action by the department pursuant to § 40-11-125.

SECTION 20. Tennessee Code Annotated, Section 40-11-317(a), is amended by deleting the subsection and substituting the following:

In addition to any other qualifications required by law, a person seeking to become a professional bondsman shall file a petition or license application and an application for a certificate of registration with the department, and must attach an affidavit setting forth the person's criminal history, if any. If the affidavit is found to be inaccurate, the applicant is immediately disqualified as a professional bondsman. In addition, the applicant shall submit to a criminal history background check by the Tennessee bureau of investigation as provided for under § 38-6-109 and shall be responsible for any fees for the criminal history background check. The Tennessee bureau of investigation shall submit the results of the criminal background check to the clerks of all courts in which the professional bondsman is qualified and to the department.

SECTION 21. Tennessee Code Annotated, Section 40-11-317(b), is amended by deleting the subsection.

SECTION 22. Tennessee Code Annotated, Section 40-11-319(a), is amended by deleting the language:

shall notify, in writing, within seventy-two (72) hours of the arrest, the court or courts in which the professional bondsman is qualified

and substituting the language:

shall notify the department in writing within seventy-two (72) hours of the arrest

SECTION 23. Tennessee Code Annotated, Section 40-11-319(c), is amended by deleting the subsection and substituting the following:

Upon receipt of the notice, the department may proceed in accordance with § 40-11-125 if it believes such action is warranted.

SECTION 24. Tennessee Code Annotated, Section 40-11-319(d), is amended by deleting the subsection and substituting the following:



Failure to comply with this section results in an automatic suspension of the professional bondsman until the department conducts a hearing pursuant to § 40-11-125(b), or until the criminal charges against the professional bondsman are resolved.

SECTION 25. Tennessee Code Annotated, Title 40, Chapter 11, Part 3, is amended by adding the following as a new section:

**40-11-314.**

(a) On or after January 1, 2022, a person shall not operate as a professional bondsman in this state unless the person is registered with the department under this section.

(b)

(1) The department, in consultation and cooperation with members of the judiciary in this state, shall promulgate rules for the regulation of professional bondsmen that are reasonably necessary to carry out this chapter, including, but not limited to, the following:

(A) Implement and administer the registration program created by this section, including, but not limited to, the establishment of adequate registration and renewal fees to cover the cost of implementing and administering the registration program for professional bondsmen;

(B) Establish procedures for handling disciplinary matters involving professional bondsmen registered under this section and for persons engaged in the unauthorized practice of bail bonding;

(C) Establish the standards of practice and qualifications for the issuance of a certificate of registration for professional bondsmen under this section. Such standards and qualifications include, but are not limited to:

(i) The completion of a course of instruction in bail bonding;

(ii) The completion of a state-specific training course in criminal law;

(iii) The passing of an examination testing the applicant's knowledge of all relevant subject matter pertaining to bail bonding; and

(iv) Procedures to require professional bondsmen to submit to criminal history background checks in accordance with § 38-6-109;

(D) Establish any other procedures deemed necessary by the department for the supervision of professional bondsmen registered under this section; and

(E) Establish the continuing education programs for professional bondsmen, to be administered by an approved third-party contractor under part 4 of this chapter.

(2) The rules must be promulgated in accordance with this chapter and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) A person eighteen (18) years of age or older may apply for a certificate of registration to engage in the practice of bail bonding.

(d) An application for a certificate of registration as a professional bondsman must be submitted on a form prescribed by the department. The application must be accompanied by a surety bond executed by the applicant and a surety company authorized to do business in this state, made payable to the state of Tennessee in the amount of ten thousand dollars (\$10,000). The bond is for the use and benefit of any

person who may be injured or aggrieved by a wrongful act or omission of an employee, servant, officer, or agent in the conduct of business of the professional bondsman. A person who is injured or aggrieved may sue directly on the bond without assignment of the bond.

(e) A certificate of registration expires two (2) years from the date of the registration or renewal.

(f) A registered professional bondsman shall list each place of business within this state with reference to its specific location, upon registration and upon subsequent renewals of the registration.

(g) Included on each registration and renewal form must be a section in which the registrant declares, under penalty of perjury pursuant to § 39-16-702(a)(3), whether the registrant has ever been convicted of a violation of this chapter or of any other criminal offense, which must be disclosed on the application.

(h) A registrant who has been convicted of a violation of this part is prohibited from registering under this chapter for five (5) years from the date of conviction.

(i) The department shall create and keep up to date a registry of names of all persons registered as professional bondsmen, along with a separate list of names of persons who have been disciplined by the department in the previous five (5) years for violating this chapter. The department shall post and maintain the registry on the department website.

(j) Notwithstanding any law to the contrary, a registration issued pursuant to this section expires upon notification to the department that the registrant is no longer in business at the registered location.

SECTION 26. Tennessee Code Annotated, Section 40-11-401, is amended by deleting the section and substituting the following:

Each professional bondsman or professional bonding agent must obtain sixteen (16) hours of continuing education credits during each twelve-month period beginning on January 1 of each year.

SECTION 27. Tennessee Code Annotated, Section 40-11-402, is amended by deleting the section and substituting the following:

Each agent shall file annually, along with the first semiannual report as described in § 40-11-303, a certificate of compliance of continuing education with the department, who shall then forward a copy of the report to the clerk of the criminal or civil court of each county in which the agent is furnishing bail or bonds securing costs and fines. This certificate must show in detail the names, locations, dates, and hours of each course attended, along with the signature of the agent attesting that all continuing educational requirements have been completed.

SECTION 28. Tennessee Code Annotated, Section 40-11-403, is amended by deleting the section and substituting the following:

If a bail bondsman does not obtain the required sixteen (16) continuing education hour credits within each twelve-month period as described in § 40-11-401, and have the necessary certificate of compliance filed with the department by January 15 of each year, the department shall notify the bail bondsman by certified mail that the bail bondsman is not in compliance with the continuing education requirements of this part along with the number of hours the bail bondsman lacks to be in compliance. If the bondsman has not furnished the department with a certificate of compliance with continuing education requirements within sixty (60) days of receiving the notice of noncompliance, the department shall suspend the bail bondsman from furnishing bail or bonds securing costs and fines, and remove the bail bondsman's name from the approved list of qualified and approved bail bondsmen, as described in § 40-11-124,

until the bail bondsman completes the continuing education credits and properly files the required certificate with the department. Any disciplinary action taken against a bail bondsman under this section must be posted to the registry on the department website in accordance with § 40-11-314(i) within one (1) business day of the time such action is taken.

SECTION 29. Tennessee Code Annotated, Section 40-11-404, is amended by deleting subsections (a) and (b) and substituting the following:

(a) The department shall approve a third-party contractor, which may include a professional association related to bail bonding, to provide all continuing education courses, and shall issue certificates of compliance to certify attendance of the agents to the clerks of the courts. The certificates shall be prepared and delivered to all agents who have completed the requirements by December 15 of the year before filing is required. In no event shall a certificate be issued to an agent who has not completed the attendance requirements for that calendar year.

(b) The third-party contractor may either provide or contract for a minimum of sixteen (16) hours of continuing education classes to be held on a regular basis in each of the grand divisions and may provide additional classes as necessary. A schedule of these classes must be provided to all agents. The third-party contractor shall not charge more than four hundred eighty dollars (\$480) annually for the sixteen (16) hours of continuing education, and the cost of any course with less than sixteen (16) hours must be prorated.

SECTION 30. Tennessee Code Annotated, Section 40-11-405, is amended by deleting the section.

SECTION 31. Tennessee Code Annotated, Title 40, Chapter 11, Part 3, is amended by adding the following section:

The practice of bail bonding and the regulation thereof under this chapter shall be audited in conjunction with the audit of the department of commerce and insurance by the comptroller of the treasury for purposes of title 4, chapter 29. The audit is to include, but not be limited to, a random review of certificates of compliance prescribed under § 40-11-402.

SECTION 32. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.