
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 367 Session of
2015

INTRODUCED BY CUTLER, CALTAGIRONE, REGAN, COHEN, LONGIETTI,
HENNESSEY, KOTIK, CORBIN, TOPPER, TOEPEL, CARROLL, MILLARD,
WATSON, SAYLOR, KORTZ, MURT, A. HARRIS, MENTZER, SACCONI,
D. COSTA, GINGRICH, M. K. KELLER, THOMAS, GALLOWAY, GODSHALL,
PICKETT, TAYLOR, BRIGGS, NEUMAN, MAJOR, ELLIS, O'BRIEN,
SNYDER, GIBBONS, M. DALEY, DeLUCA, NESBIT, DIAMOND, SABATINA,
DEAN, FLYNN, FEE, EVERETT, CAUSER, DERMODY, HELM, ADOLPH,
HANNA, PETRI, PYLE, KILLION, P. DALEY, TOOHIL, READSHAW,
FARINA, HARHART, DRISCOLL, P. COSTA, KAUFFMAN AND MARSHALL,
FEBRUARY 9, 2015

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 9, 2015

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." A person who 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] a 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.--If 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 subject to the bail forfeiture order.

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

1 individual is excused from payment due to a mistake of fact.

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

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

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

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

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

25 (e) Construction.--This section shall apply in addition to
26 the provisions of Article VI-A of the act of May 17, 1921
27 (P.L.789, No.285), known as The Insurance Department Act of
28 1921, and shall supersede any conflicting provision in any other
29 state law unless the provision specifically references this
30 section and provides to the contrary.

1 (f) Immunity.--The court, department, county solicitor,
2 district attorney or an employee of any of these entities, or
3 any person appointed by these entities, shall not be subject to
4 civil or criminal liability for carrying out its duties under
5 this section.

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

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

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

26 (1) Violation of any of the provisions of this
27 subchapter.

28 (2) Fraudulently obtaining a license from the department
29 or fraudulently obtaining authority to conduct business under
30 the provisions of this subchapter.

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

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

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

7 (6) Any interference or attempted interference with the
8 administration of justice.

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

10 [§ 5747. Statements by fidelity or surety companies.

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

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

24 § 5747.1. Forfeited undertaking.

25 (a) General rule.--If a defendant in a criminal prosecution
26 fails to appear for any scheduled court proceeding, the
27 defendant's bail may be revoked and notice of revocation shall
28 serve as notice of intent to forfeit the bail of the defendant.
29 The notice or order of revocation shall be served by the office
30 of the clerk to the defendant, surety or bail bondsman and

1 insurer who has issued the qualifying power of attorney for the
2 bail bondsman by certified mail, return receipt requested.

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

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

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

30 (3) Failure to render payment of the forfeited

1 undertaking by close of business on the 91st day shall bar
2 any right of remission to collect funds pursuant to the
3 forfeited undertaking.

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

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

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

30 (ii) If the defendant is recovered between six

1 months and one year after the order of revocation or
2 forfeiture, the surety shall recover 80% of the value of
3 the forfeited amount of the bond.

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

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

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

18 [§ 5748. Maximum premiums.

19 (a) General rule.--No professional bondsman shall charge a
20 premium or compensation for acting as surety on any undertaking
21 in excess of 10% for the first \$100, and 5% for each additional
22 \$100 of such undertaking.

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

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

28 § 5748.1. Private cause of action.

29 (a) Self-policing.--A bail bondsman or insurer who
30 determines that a competitor has engaged in an activity that is

1 in violation of any provision of this chapter may commence a
2 cause of action seeking monetary damages, declaratory judgment
3 or injunctive relief from the court of common pleas of the
4 county in which the violation occurred. The violation must be
5 proven by clear and convincing evidence.

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

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

13 § 5749. Prohibitions and penalties.

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

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

23 (c) Soliciting.--Any person who accepts any fee or
24 compensation for obtaining a bondsman or a recognizance commits
25 a summary offense.

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

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

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

6 (2) (i) Notwithstanding paragraph (1), it shall be
7 lawful for a person who serves as a law enforcement
8 officer, employee of a penal institution or any other
9 system or related personnel to engage in the service of
10 aiding a bail bondsman in fugitive recovery so long as
11 all of the following apply:

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

15 (B) The person is compensated separately.

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

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

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

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