

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 397 Session of 2015

INTRODUCED BY ALLOWAY, KITCHEN, YUDICHAK, BREWSTER, BLAKE, SCHWANK, RAFFERTY, AUMENT, WHITE, COSTA, EICHELBERGER, BOSCOLA, FARNESE, MENSCH, BAKER, MCGARRIGLE, WOZNIAK, BROOKS, WILLIAMS, SMITH AND TARTAGLIONE, JANUARY 30, 2015

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, FEBRUARY 3, 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:

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 that engages in the business of
3 giving bail as a surety for compensation.

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

5 "Insurer." As defined in section 601-A of the act of May 17,
6 1921 (P.L.789, No.285), known as The Insurance Department Act of
7 1921.

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

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

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

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

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

27 § 5742. [Registration and licensure] Licensure required.

28 [(a) General rule.--No professional bondsman shall become
29 surety on any undertaking, and no person shall engage in or
30 continue to engage in business as a professional bondsman,

1 unless he has been registered and is currently licensed as a
2 professional bondsman by the Insurance Department as provided in
3 this subchapter and has filed a copy of his license in the
4 office of the clerk in the manner prescribed by general rules.

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

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

15 [§ 5743. Issuance of license.

16 (a) General rule.--The Insurance Department, upon receipt
17 of:

18 (1) an application for registration and licensure as a
19 professional bondsman; and

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

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

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

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

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

28 § 5743.1. Authorization to conduct business within each county.

29 A bail bondsman shall only be authorized to conduct business
30 in a county when the bail bondsman provides all of the following

1 documents to the office of the clerk:

2 (1) A copy of the license issued to the bail bondsman by
3 the department.

4 (2) A statement identifying an office address for
5 service of legal process.

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

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

13 § 5744. Office.

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

24 § 5745. [Refusal to grant or renew license] Suspension or
25 nonrenewal of license for unpaid forfeitures.

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

30 (a) General rule.--Where the court of common pleas for the

1 county where the bail bondsman is authorized to conduct business
2 has been unable to collect unpaid forfeitures after a period of
3 six months, the court, upon petition of the county solicitor or
4 district attorney, shall issue an order directing the department
5 to:

- 6 (1) deny renewal of a license of the bail bondsman; or
7 (2) immediately suspend the license of the bail
8 bondsman.

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

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

16 (i) The amount of forfeitures owed to the county, if
17 applicable.

18 (ii) How, when and where the notice can be
19 contested.

20 (iii) That the grounds for contesting the notice
21 shall be limited to mistakes of fact. Mistakes of fact
22 shall be limited to errors in the amount of forfeitures
23 owed or mistaken identity of the bail bondsman as the
24 person who was subjected to the criminal conviction or <--
25 civil determination of insolvency SUBJECT TO THE BAIL <--
26 FORFEITURE ORDER.

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

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

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

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

15 (2) To contest any order, the bail bondsman or insurer
16 must appear before the court no later than 10 days after
17 issuance of the order. The grounds for contesting shall be
18 limited to mistakes of fact. If it is determined, after a
19 hearing by the court, that a mistake of fact has occurred,
20 the action shall be modified accordingly within 10 days.

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

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

27 (e) Construction.--This section SHALL APPLY IN ADDITION TO <--
28 THE PROVISIONS OF ARTICLE VI-A OF THE ACT OF MAY 17, 1921
29 (P.L.789, NO.285), KNOWN AS THE INSURANCE DEPARTMENT ACT OF
30 1921, AND shall supersede any conflicting provision in any other

1 State law unless the provision specifically references this
2 section and provides to the contrary.

3 (f) Immunity.--The court, the department, the county
4 solicitor and the district attorney, and any employee or
5 appointee of these entities, shall not be subject to civil or
6 criminal liability for carrying out the entity's duties under
7 this section. Nothing in this section is intended to limit the
8 civil or criminal liability of a bail bondsman or an employee or
9 agent thereof.

10 § 5746. Suspension or revocation of [license] authority to
11 conduct business in a county.

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

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

30 (1) Violation of any of the provisions of this

1 subchapter.

2 (2) Fraudulently obtaining a license FROM THE DEPARTMENT <--
3 OR FRAUDULENTLY OBTAINING AUTHORITY TO CONDUCT BUSINESS under
4 the provisions of this subchapter.

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

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

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

11 (6) Any interference or attempted interference with the
12 administration of justice.

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

14 [§ 5747. Statements by fidelity or surety companies.

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

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

28 § 5747.1. Forfeited undertaking.

29 (a) General rule.--If a defendant in a criminal prosecution
30 fails to appear for any scheduled court proceeding, the

1 defendant's bail may be revoked, and notice of revocation shall
2 serve as notice of intent to forfeit the bail of the defendant.
3 Such notice or order of revocation shall be served by the office
4 of the clerk to the defendant, surety or bail bondsman and
5 insurer who has issued the qualifying power of attorney for the
6 bail bondsman, by certified mail, return receipt requested.

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

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

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

1 shall not be continued by the court as surety on reinstated
2 bail unless a written consent is signed by the bail bondsman
3 agreeing to such extension of suretyship.

4 (3) Failure to render payment of the forfeited
5 undertaking by close of business on the 91st day shall bar
6 any right of remission to collect funds pursuant to a
7 forfeited undertaking.

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

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

29 (i) If the defendant is recovered between the 91st
30 day and six months after the order of revocation or

1 forfeiture, the surety shall recover the full value of
2 the forfeited amount of the bond, less an administrative
3 fee in the amount of \$250.

4 (ii) If the defendant is recovered between six
5 months and one year after the order of revocation or
6 forfeiture, the surety shall recover 80% of the value of
7 the forfeited amount of the bond.

8 (iii) If the defendant is recovered between one and
9 two years after the order of revocation or forfeiture,
10 the surety shall recover 50% of the value of the
11 forfeited amount of the bond.

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

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

22 [§ 5748. Maximum premiums.

23 (a) General rule.--No professional bondsman shall charge a
24 premium or compensation for acting as surety on any undertaking
25 in excess of 10% for the first \$100, and 5% for each additional
26 \$100 of such undertaking.

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

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

2 § 5748.1. Private cause of action.

3 (a) Self-policing.--Any bail bondsman or insurer who
4 determines that a competitor has engaged in an activity that is
5 in violation of any provision of this chapter may commence a
6 cause of action seeking monetary damages, declaratory judgment
7 or injunctive relief from the court of common pleas of the
8 county in which the violation occurred. The violation must be
9 proven by clear and convincing evidence.

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

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

17 § 5749. Prohibitions and penalties.

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

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

27 (c) Soliciting.--Any person who accepts any fee or
28 compensation for obtaining a bondsman or a recognizance commits
29 a summary offense.

30 (d) Other violations.--Any person who violates any section

1 of this subchapter for which no specific penalty other than
2 suspension or revocation of license is provided commits a
3 summary offense.

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

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

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

16 (A) The services are not rendered while the
17 person is performing the person's duties in the
18 person's capacity as a city, county or State
19 employee.

20 (B) The person is compensated separately.

21 (ii) Any person who engages in fugitive recovery
22 while in the service of the city, county or State or
23 engages in fugitive recovery in uniform or under badge of
24 the person's office commits a misdemeanor of the second
25 degree.

26 (f) Public solicitation.--Any [professional] bail bondsman
27 who solicits business in any of the courts or on the premises of
28 any tribunal of this Commonwealth, including any tribunal
29 conducted by a magisterial district judge, commits a summary
30 offense.

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

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