
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

REFERRED TO BANKING AND INSURANCE, JANUARY 30, 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.

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

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

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

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

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

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

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

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

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

26 § 5742. [Registration and licensure] Licensure required.

27 [(a) General rule.--No professional bondsman shall become
28 surety on any undertaking, and no person shall engage in or
29 continue to engage in business as a professional bondsman,
30 unless he has been registered and is currently licensed as a

1 professional bondsman by the Insurance Department as provided in
2 this subchapter and has filed a copy of his license in the
3 office of the clerk in the manner prescribed by general rules.

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

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

14 [§ 5743. Issuance of license.

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

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

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

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

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

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

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

27 § 5743.1. Authorization to conduct business within each county.

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

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

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

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

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

12 § 5744. Office.

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

23 § 5745. [Refusal to grant or renew license] Suspension or
24 nonrenewal of license for unpaid forfeitures.

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

29 (a) General rule.--Where the court of common pleas for the
30 county where the bail bondsman is authorized to conduct business

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

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

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

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

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

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

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

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

1 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 deny renewal of or to suspend 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 any order, the bail bondsman or insurer
14 must appear before the court no later than 10 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 10 days.

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

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

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

29 (f) Immunity.--The court, the department, the county
30 solicitor and the district attorney, and any employee or

1 appointee of these entities, shall not be subject to civil or
2 criminal liability for carrying out the entity's duties under
3 this section. Nothing in this section is intended to limit the
4 civil or criminal liability of a bail bondsman or an employee or
5 agent thereof.

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 bail
11 bondsman to conduct business in a county that has been granted
12 under this subchapter, a rule shall issue out of the court of
13 common pleas, returnable not less than ten days after the
14 issuance thereof. It shall be sufficient service of the said
15 rule upon any [licensee to leave a copy thereof at] bail
16 bondsman to send by certified mail, return receipt requested, to
17 the address filed by the [licensee] bail bondsman with the
18 office of the clerk pursuant 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, by any court of common pleas for a
22 period less than the unexpired portion of the period for which
23 such license shall have been issued, or may be revoked for good
24 cause, or for any one or more of the following causes:

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

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

29 (3) Upon conviction for any criminal offense under the
30 laws of this Commonwealth or under the laws of the United

1 States or any other jurisdiction.

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

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

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

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

8 [§ 5747. Statements by fidelity or surety companies.

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

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

22 § 5747.1. Forfeited undertaking.

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

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

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

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

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

1 forfeited undertaking.

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

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

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

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

1 the forfeited amount of the bond.

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

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

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

16 [§ 5748. Maximum premiums.

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

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

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

26 § 5748.1. Private cause of action.

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

1 or injunctive relief from the court of common pleas of the
2 county in which the violation occurred. The violation must be
3 proven by clear and convincing evidence.

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

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

11 § 5749. Prohibitions and penalties.

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

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

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

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

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

29 (1) Any law enforcement officer, any employee of a penal
30 institution, or any other system or related personnel, who

1 has, directly or indirectly, any pecuniary interest in or
2 derives any profit from the bonding business or activity of a
3 [professional] bail bondsman commits a summary offense.

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

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

14 (B) The person is compensated separately.

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

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

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

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