
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 AND KITCHEN, JUNE 23, 2014

REFERRED TO BANKING AND INSURANCE, JUNE 23, 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:

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 or entity licensed as required
2 under this subchapter that engages in the business of giving
3 bail as a surety for compensation.

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

5 "Insurer." A surety, insurance or fidelity company
6 authorized to conduct business by the department and approved to
7 underwrite bail bonds.

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

25 [(a) General rule.--No professional bondsman shall become
26 surety on any undertaking, and no person shall engage in or
27 continue to engage in business as a professional bondsman,
28 unless he has been registered and is currently licensed as a
29 professional bondsman by the Insurance Department as provided in
30 this subchapter and has filed a copy of his license in the

1 office of the clerk in the manner prescribed by general rules.

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

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 Section 5743 of Title 42 is repealed:

12 [§ 5743. Issuance of license.

13 (a) General rule.--The Insurance Department, upon receipt
14 of:

15 (1) an application for registration and licensure as a
16 professional bondsman; and

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

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

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

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

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

25 § 5743.1. Authorization to conduct business within each county.

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

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

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

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

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

10 § 5744. Office.

11 No [license shall be issued to, and no] privileges or rights
12 conferred by any license issued under the provisions of this
13 subchapter shall be exercised by[, any professional] any bail
14 bondsman, unless such [professional] bail bondsman has and shall
15 thereafter maintain [an] a bona fide office [in the county in
16 which he conducts or intends to conduct his business] eligible
17 to receive service of legal process in this Commonwealth.

18 § 5745. Refusal to grant or renew license, suspension and
19 revocation.

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

24 (a) General rule.--Where the court of common pleas for the
25 county where the bail bondsman is authorized to conduct business
26 has been unable to collect unpaid forfeitures after a period of
27 six months, the court, upon petition of the county solicitor,
28 shall issue an order directing the department to:

29 (1) prohibit the issuance or renewal of a license of the
30 bail bondsman; or

1 (2) require the suspension of the license of the bail
2 bondsman.

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

5 (1) Prior to the issuance of an order to suspend,
6 nonrenew or deny a license, the bail bondsman and insurer who
7 issued the qualifying power of attorney shall be given
8 advance notice. The notice shall specify all of the
9 following:

10 (i) The amount of forfeitures owed to the county, if
11 applicable.

12 (ii) How, when and where the notice can be
13 contested.

14 (iii) That the grounds for contesting the notice
15 shall be limited to mistakes of fact. Mistakes of fact
16 shall be limited to errors in the amount of forfeitures
17 owed or mistaken identity of the bail bondsman as the
18 person who was subjected to the criminal conviction or
19 civil determination of insolvency.

20 (iv) That an order to the licensing authority to
21 automatically suspend, nonrenew or deny the license will
22 occur in all cases 60 days after issuance of the notice
23 unless the amount of forfeitures is paid, a periodic
24 payment schedule is approved by the court or the
25 individual is excused from payment due to a mistake of
26 fact.

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

28 (1) Thirty days after the issuance of the notice, if the
29 bail bondsman has not paid the amount of forfeitures due, the
30 court shall direct or cause an order to be issued to the

1 department to suspend or deny the issuance or renewal of a
2 license. Upon receipt, the department shall immediately
3 comply with the order or directive. The department shall have
4 no authority to stay implementation of the order or to hold a
5 hearing except in cases of mistaken identity. A copy of the
6 order issued by the court shall be served upon the bail
7 bondsman and insurer by certified mail, return receipt
8 requested.

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

15 (3) Any order issued by the court to suspend, nonrenew
16 or deny the license shall be applicable to all counties where
17 the bail bondsman conducts business.

18 (d) Implementation.--The department may promulgate
19 regulations and issue directives to coordinate and carry out the
20 provisions of this section.

21 (e) Construction.--This section shall supersede any
22 conflicting provision in any other State law unless the
23 provision specifically references this section and provides to
24 the contrary.

25 (f) Immunity.--The court, the department or any employee of
26 any of these entities, or any person appointed by these
27 entities, shall not be subject to civil or criminal liability
28 for carrying out its duties under this section.

29 § 5746. Suspension or revocation of [license] authority to
30 conduct business in a county.

1 (a) General rule.--Upon petition of the district attorney or
2 by any interested person to suspend or revoke the [license
3 issued to any licensee] authority to conduct business in a
4 county of any bail bondsman granted under this subchapter, a
5 rule shall issue out of the court of common pleas, returnable
6 not less than ten days after the issuance thereof. It shall be
7 sufficient service of the said rule upon any [licensee to leave
8 a copy thereof at] bail bondsman to send by certified mail,
9 return receipt requested, to the address filed by the [licensee]
10 bail bondsman with the clerk pursuant to this subchapter.

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

17 (1) Violation of any of the provisions of this
18 subchapter.

19 (2) Fraudulently obtaining a license under the
20 provisions of this subchapter.

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

24 (4) Upon being adjudged a bankrupt or insolvent.

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

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

29 Section 6. Section 5747 of Title 42 is repealed:
30 [§ 5747. Statements by fidelity or surety companies.

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

13 Section 7. Title 42 is amended by adding a section to read:
14 § 5747.1. Forfeited undertaking.

15 (a) General rule.--If a defendant in a criminal prosecution
16 fails to appear for any scheduled court proceeding, the
17 defendant's bail may be revoked and notice of revocation shall
18 serve as notice of intent to forfeit the bail of the defendant.
19 Such notice or order of revocation shall be sent by the clerk of
20 court to the defendant, bail bondsman and insurer who has issued
21 the qualifying power of attorney for the bail bondsman.

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

23 (1) Ninety days from the date of the notice of
24 revocation or order of revocation, the revocation shall
25 become a judgment of forfeiture, payment of which shall be
26 immediately required by the defendant or surety. Failure of a
27 bail bondsman to make a timely payment of a forfeiture
28 judgment shall result in the clerk of court's commencing
29 suspension or revocation of license proceedings with the
30 department as set forth under section 5746 (relating to

1 suspension or revocation of authority to conduct business in
2 a county).

3 (2) Payment of any forfeited undertaking shall be made
4 directly to the clerk of courts not later than the close of
5 business on the 91st day following the issuance of the notice
6 of revocation. If the defendant has been recovered and placed
7 into custody through the efforts of the bail bondsman or
8 discovered to be in custody by the bail bondsman prior to the
9 91st day, no payment of the forfeited undertaking shall be
10 required. If the defendant is placed into custody, the court
11 shall determine whether the bail revocation shall be set
12 aside with the reinstatement of bail pursuant to the rules of
13 criminal procedure. The bail bondsman shall not continue as
14 surety on reinstated bail unless a written consent is signed
15 by the bail bondsman agreeing to such extension of
16 suretyship.

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

21 (4) The clerk of courts shall provide a summary
22 quarterly statement of all overdue forfeited undertakings
23 which have not been paid by each bail bondsman and corporate
24 surety insurer. The bail bondsman or corporate surety insurer
25 shall be afforded 30 days from the date of the statement to
26 render payment of the forfeited undertakings. Failure to
27 render payment by close of business on the 31st day shall
28 result in suspension of the ability to conduct business of
29 both the bail bondsman and the corporate surety insurer in
30 that judicial district until such time as payment is rendered

1 in full. Both the bail bondsman and the corporate surety
2 insurer may be subject to formal suspension or termination
3 proceedings pursuant to section 5746. In addition, the surety
4 may be subjected to further administrative penalties, to be
5 determined by the department, consistent with the act of July
6 22, 1974 (P.L.589, No.205), known as the Unfair Insurance
7 Practices Act.

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

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

18 (ii) If the defendant is recovered between six
19 months and one year after the order of revocation or
20 forfeiture, the surety shall recover 80% of the value of
21 the forfeited amount of the bond.

22 (iii) If the defendant is recovered between one and
23 two years after the order of revocation or forfeiture,
24 the surety shall recover 50% of the value of the
25 forfeited amount of the bond.

26 (6) No third-party surety shall be responsible to render
27 payment on a forfeited undertaking if the revocation of bail
28 is sought for failure of the defendant to comply with the
29 conditions of the defendant's release other than appearance.
30 Any violation of performance conditions by a defendant shall

1 be deemed as a violation of a court order, subject to a
2 conviction for indirect contempt of court and all associated
3 penalties.

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

5 [§ 5748. Maximum premiums.

6 (a) General rule.--No professional bondsman shall charge a
7 premium or compensation for acting as surety on any undertaking
8 in excess of 10% for the first \$100, and 5% for each additional
9 \$100 of such undertaking.

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

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

15 § 5748.1. Private cause of action.

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

23 (b) Frivolous actions.--Any bail bondsman or surety who
24 wrongfully commences a baseless action, knowingly without any
25 merit or evidence, shall be subject to actual damages in the
26 amount of the costs of the defense of the suit and punitive
27 damages of an equal amount to those costs that constitute actual
28 damages.

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

30 § 5749. Prohibitions and penalties.

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

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

10 (c) Soliciting.--Any person who accepts any fee or
11 compensation for obtaining a bondsman or a recognizance commits
12 a summary offense.

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

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

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

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

29 (A) The services are not rendered while the
30 person is performing the person's duties in the

1 person's capacity as a city, county or State
2 employee.

3 (B) The person is compensated separately.

4 (ii) Any person who engages in fugitive recovery
5 while in the service of the city, county or State or
6 engages in fugitive recovery in uniform or under badge of
7 the person's office commits a misdemeanor of the second
8 degree.

9 (f) Public solicitation.--Any [professional] bail bondsman
10 who solicits business in any of the courts or on the premises of
11 any tribunal of this Commonwealth, including any tribunal
12 conducted by a magisterial district judge, commits a summary
13 offense.

14 Section 11. This act shall take effect in 90 days.