
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 192 Session of
2012

INTRODUCED BY STACK, ALLOWAY, ROBBINS, SCHWANK, WOZNIAK AND
FERLO, SEPTEMBER 5, 2012

REFERRED TO BANKING AND INSURANCE, SEPTEMBER 5, 2012

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 a private cause of action.

5 The General Assembly finds as follows:

6 (1) The bail bondsmen industry in this Commonwealth is
7 in need of legal reform.

8 (2) Some bail bondsmen are issuing bonds without
9 collecting sufficient collateral and are giving money
10 directly to alleged criminals.

11 (3) Other bail bondsmen are issuing bonds to risky
12 defendants in order to turn a profit and not to protect the
13 community at large.

14 (4) As a result, defendants who post bond through bail
15 bondsmen are likely to jump bail and not to appear at their
16 mandatory court dates.

17 (5) The bail bondsmen industry in this Commonwealth
18 should be uniformly regulated in a manner that is similar to
19 the process for licensing insurers.

1 (6) The process should be funded solely on licensing
2 fees so that the regulation of the bail bondsmen industry is
3 self-sustaining and revenue-neutral to the Commonwealth.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Subchapter B heading of Chapter 57 of Title 42 of
7 the Pennsylvania Consolidated Statutes is amended to read:

8 SUBCHAPTER B

9 [PROFESSIONAL] BAIL BONDSMEN

10 Section 2. Sections 5741, 5742, 5743, 5744, 5745, 5746,
11 5747, 5748 and 5749(a) of Title 42 are amended to read:

12 § 5741. Definitions.

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

16 "Bail bondsman." A person or entity that is authorized to
17 execute bail bonds or to solicit business on its behalf and
18 that:

19 (1) Either:

20 (i) engages in the business of giving bail, giving
21 or soliciting undertakings, or giving or soliciting
22 indemnity or counterindemnity to sureties on
23 undertakings; or

24 (ii) within a period of 30 days has become a surety,
25 or has indemnified a surety, for the release on bail of a
26 person, with or without a fee or compensation, or promise
27 thereof, in three or more matters not arising out of the
28 same transaction.

29 (2) Is licensed as a corporate surety bail bondsman or
30 self-insured bail bondsman as provided in this chapter.

1 "Corporate surety bail bondsman." A person licensed by the
2 Insurance Department to provide bail bonds to the general public
3 and authorized by a corporate surety insurer to execute bail
4 bonds as attorney-in-fact for the corporate surety insurer.

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

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

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

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

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

22 "Self-insured bail bondsman." A person licensed by the
23 Insurance Department to provide bail bonds to the general public
24 and that provides financial security as collateral for the bail
25 bonds.

26 § 5742. Registration and licensure required.

27 (a) General rule.--No [professional] bail bondsman shall
28 become surety on any undertaking, and no person shall engage in
29 or continue to engage in business as [a professional bondsman]
30 providing bail bonds to the general public, unless he has [been

1 registered and is currently licensed as a professional bondsman
2 by the Insurance Department as provided in this subchapter], at
3 a minimum, fulfilled the requirements for the issuance of a
4 casualty insurance license as determined by the department, has
5 secured a casualty insurance license from the department and has
6 filed a copy of his license in the office of the clerk in the
7 manner prescribed by general rules.

8 (b) Form of application.--Every application for
9 [registration and] licensure as a [professional] bail bondsman
10 shall [be made in writing upon such form as may be prescribed by
11 regulations promulgated by the Insurance Department] comply with
12 the application requirements for a casualty insurance license
13 issued by the department and shall complete all educational,
14 testing, financial and fiduciary requirements imposed by law for
15 obtaining a license as a casualty insurance agent.

16 § 5743. Issuance of license.

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

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

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

22 shall, if it approves the application, register the applicant as
23 a professional bondsman and issue him a license.] department
24 shall issue a license to an applicant who satisfactorily meets
25 the requirements established by the department for insurers of
26 casualty insurance and pays the associated licensing fee.

27 (a.1) Territorial scope of license.--A bail bondsman may
28 only conduct business in a judicial district when he provides
29 either:

30 (1) a copy of the casualty license issued to him by the

1 Pennsylvania Office of Judicial Support to the office of the
2 clerk of court for the judicial district and a copy of a
3 power of attorney qualifying him to provide bail bond
4 services on behalf of a corporate bail surety insurer; or

5 (2) security in the amount of \$50,000 for the first
6 \$150,000 of the total amount of bail bonds to be provided and
7 \$10,000 for every additional \$100,000 thereafter.

8 (a.2) Forms of security.--The department shall accept the
9 following forms of security for self-insurance purposes under
10 this section:

11 (1) United States currency, including United States
12 Treasury bills, United States Treasury notes or other
13 negotiable obligations of the United States Government.
14 United States Savings Bonds are not negotiable.

15 (2) Evidence of escrow deposits in Federal or State
16 banks, credit unions, savings and loan associates, if
17 federally insured. Escrow deposits must be established for
18 the sole purpose of providing security to meet the duties of
19 a self-insurer under this section.

20 (3) Irrevocable letters of credit issued by any bank in
21 this Commonwealth or such other bank as approved by the
22 office of the clerk of court through the President Judge of
23 the relevant judicial district.

24 (4) Real estate, provided that the party offering the
25 real estate submits an appraisal by an independent appraiser,
26 a title search confirming there are no liens or encumbrances
27 and a deed of trust naming the Commonwealth of Pennsylvania
28 as beneficiary.

29 (a.3) Self-insured bail bondsman.--Any person conducting
30 business as a self-insured bail bondsman or agent of a self-

1 insured bail bondsman shall be required to submit an affidavit
2 stating the aggregate amount of bail bonds which are active at
3 the time of posting under the self-insured bail bondsman deposit
4 account with the relevant judicial district. The affidavit shall
5 be attested to as the best of the affiant's information,
6 knowledge and belief and shall be subject to the penalties of 18
7 Pa.C.S. § 4904 (relating to unsworn falsification to
8 authorities).

9 (b) Duration.--Each license shall be valid for [one year]
10 two years following the date of issue.

11 (c) Nontransferable.--No license issued under this
12 subchapter shall be assigned or transferred.

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] bail
17 bondsman[,] unless [such professional bondsman] he has and
18 [shall thereafter maintain] maintains an office in the county in
19 which he conducts or intends to conduct his business.

20 § 5745. Refusal to grant or renew license.

21 The [Insurance Department] department, upon the written
22 request of any applicant for a license or for renewal thereof
23 whose application therefor has been refused, shall afford [such]
24 the applicant a hearing on the question of the grant or renewal
25 of a license. The department may not grant a license or renew a
26 license under this chapter to an applicant if any of the
27 following provisions apply:

28 (1) The applicant was convicted or pled guilty or nolo
29 contendere to an offense of fraud, theft, deception, use of
30 false identification or similar charge under 18 Pa.C.S.

1 (relating to crimes and offenses) or any other Federal or
2 state law for the same or similar offense.

3 (2) The applicant violated any of the licensing
4 requirements relating to a casualty insurance agent license,
5 including continuing education requirements. If a license
6 renewal is denied for failure to complete continuing
7 education requirements, then the applicant shall be afforded
8 90 days to cure the defect. Upon cure, the applicant must
9 provide notice of completion of the continuing education
10 requirements to the department, and the department shall
11 grant the renewal of the license, if no other causes exist
12 for denial of the renewal. If the applicant fails to cure the
13 defect in a timely manner, the applicant must apply for a new
14 license rather than a renewal.

15 (3) The applicant fraudulently obtained a license as a
16 casualty insurance agent or bail bondsman under the
17 provisions of this chapter, other chapters relating to
18 insurance licensing in this Commonwealth or any other
19 jurisdiction within the United States.

20 (4) The applicant was adjudicated bankrupt or insolvent
21 in this Commonwealth or any other jurisdiction within the
22 United States.

23 (5) The applicant failed to pay any judgment rendered on
24 any forfeited undertaking in any court of competent
25 jurisdiction.

26 (6) The applicant interfered or attempted to interfere
27 with the administration of justice.

28 § 5746. Suspension or revocation of license.

29 (a) General rule.--Upon petition of the district attorney,
30 county solicitor, clerk of court or by any interested person to

1 suspend or revoke the license issued to any licensee under this
2 subchapter, the department shall issue a rule [shall issue out
3 of the court of common pleas,] returnable not less than ten days
4 after the issuance thereof for the licensee to show cause, if
5 any, why the licensee should not have its license revoked or
6 suspended. It shall be sufficient service of the [said] rule
7 upon any licensee to leave a copy thereof at the address [filed
8 by the licensee with the clerk pursuant to this subchapter]
9 provided by the licensee to the department under the license
10 requirements of a casualty insurance agent.

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

18 (1) Violation of any of the provisions of this
19 subchapter or of the licensing requirements relating to a
20 casualty insurance agent license, including, but not limited
21 to, continuing education requirements, unless the violation
22 of the continuing education requirements has been remedied
23 consistent with section 5745 (relating to refusal to grant or
24 renew license).

25 (2) Fraudulently obtaining a license as a casualty
26 insurance agent or bail bondsman under the provisions of this
27 subchapter, other provisions relating to insurance licensing
28 in this Commonwealth or any other jurisdiction within the
29 United States.

30 (3) Upon conviction for [any criminal offense under the

1 laws of this Commonwealth or under the laws of the United
2 States or any other jurisdiction] an offense of fraud, theft,
3 deception, use of false identification or same or similar
4 offense under 18 Pa.C.S. (relating to crimes and offenses) or
5 any other Federal or state offense.

6 (4) Upon being adjudged [a] bankrupt or insolvent in
7 this Commonwealth or any other jurisdiction within the United
8 States.

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 (c) Good cause.--If the petition for suspension or
14 revocation is based upon the failure of the licensee to pay a
15 forfeited undertaking, proof that the forfeited undertaking has
16 been paid to the office of the clerk or that the defendant has
17 been returned to justice shall be evidence of good cause that
18 the license should not be suspended or revoked.

19 (d) Notice to surety.--

20 (1) If suspension or revocation proceedings are
21 commenced against a bail bondsman and he has provided a
22 qualifying power of attorney on behalf of a corporate surety
23 insurer to the office of the clerk and the suspension or
24 revocation proceedings are based upon the failure of the bail
25 bondsman to pay a forfeited undertaking, notice shall be sent
26 by the department to the corporate surety insurer of the
27 administrative action and the nonpayment of the forfeited
28 undertaking.

29 (2) If the bail bondsman cannot demonstrate good cause
30 and, as a result, the license is suspended, notice of

1 nonpayment shall be sent to the corporate surety insurer on
2 whose behalf the bail bondsman is appointed to do business.

3 (e) Duty of corporate surety insurer to pay.--

4 (1) Within 20 days of receiving the notice of payment,
5 the corporate surety insurer shall pay the forfeited
6 undertaking amount to the office of the clerk or, if payment
7 is not rendered within the 20-day period, the clerk of courts
8 shall send notice to the department seeking revocation of its
9 certificate of authority to do business in this Commonwealth.
10 A copy of the notice sent by the clerk to the department
11 shall be also sent to the corporate surety.

12 (2) The department may revoke the certificate of
13 authority 30 days after the date of the mailing of the notice
14 of intent to revoke the certificate of authority. Revocation
15 proceedings shall conform substantially to the existing
16 practices determined by the department.

17 (3) If the forfeited undertaking is paid after the 20-
18 day period, but prior to the exhaustion of the 30-day notice
19 period to the department, the revocation of the certificate
20 of authority shall be deemed moot and the certificate of
21 authority shall remain in full force and effect.

22 (4) If the forfeited undertaking is paid and the
23 corporate surety recuperates the defendant, the corporate
24 surety may petition the court for remission of the forfeiture
25 as provided under section 5750 (relating to private cause of
26 action).

27 § 5747. Statements by [fidelity or surety companies] bail
28 bondsmen.

29 [Any fidelity or surety company, authorized to act as surety
30 within this Commonwealth, may execute an undertaking as surety

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

14 § 5748. [Maximum premiums] Premiums.

15 (a) General rule.--[No professional bondsman shall charge a
16 premium or compensation for acting as surety on any undertaking
17 in excess of 10% for the first \$100, and 5% for each additional
18 \$100 of such undertaking.] Any corporate surety bail bondsman or
19 self-insured bail bondsman who knowingly or intentionally fails
20 to charge the premium rate filed with and approved by the
21 department commits a misdemeanor of the third degree. In
22 addition to any criminal liability imposed by law, the
23 department shall establish sanctions for failure to charge the
24 required premium.

25 (a.1) Defense.--It shall not be a violation of subsection
26 (a) if the bail bondsman failed to collect the full premium by
27 an unknowing or unintentional act or by mistake.

28 [(b) Civil penalty.--In any action brought to recover an
29 overcharge by a professional bondsman, where such overcharge is
30 proved, the professional bondsman shall be liable to pay treble

1 damages therefor and reasonable counsel fees.]

2 (c) Promissory note.--

3 (1) If a surety bail bond agent determines to extend
4 credit for payment of the premium, the surety bail bond agent
5 must have the defendant and any indemnitor execute a bona
6 fide promissory note for the balance of the premium due. The
7 promissory note shall provide that the amount owed must be
8 paid in not later than 365 days.

9 (2) In the event that the premium has not been paid in
10 full to the surety bail agent by the due date, the surety
11 bail agent must institute suit, by a verified complaint, on
12 the promissory note within 60 days after the due date. The
13 surety bail agent must diligently attempt to obtain judgment
14 on that promissory note within 120 days after filing suit
15 unless there is good cause for failure to obtain such a
16 judgment.

17 (3) Good cause includes, but is not limited to, the
18 filing of bankruptcy by a maker on the promissory note, or a
19 failure to obtain service of process after good faith,
20 diligent efforts.

21 (d) Audit.--At any time, upon five days' advance notice to
22 the bail bondsman, the department may audit any bail bondsman to
23 assure that the bail bondsman is charging the full amount of
24 premium consistent with the premium rate filed with and approved
25 by the department. The said audit shall determine the approved
26 premium rate, the amount of premium collected, the case docket
27 number if assigned, the total amount of the surety bond, the
28 date the surety bond was posted and the date the premium
29 computed at the filed rate was due.

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 and shall
6 be prohibited from conducting business as a bail bondsman in
7 this Commonwealth for the remainder of the person's lifetime and
8 from holding himself out as a licensed bail bondsman.

9 * * *

10 Section 3. Title 42 is amended by adding a section to read:
11 § 5750. Private cause of action.

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

19 (b) Frivolous actions.--Any bail bondsman or surety who
20 knowingly commences a frivolous private cause of action under
21 this section shall be liable for actual damages of the other
22 party in the amount of the costs of the defense of the suit and
23 punitive damages of an equal amount to those costs that
24 constitute actual damages.

25 Section 4. This act shall take effect in 60 days.