

No. 2015-16

AN ACT

SB 397

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in bonds and recognizances, amending provisions relating to professional bondsmen and providing for authorization to conduct business within each county, for forfeited undertaking, for private cause of action and for third-party sureties.

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

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

SUBCHAPTER B
[PROFESSIONAL] *BAIL* BONDSMEN

Section 2. Sections 5741 and 5742 of Title 42 are amended to read:
§ 5741. Definitions.

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

"Bail bondsman." *A person who engages in the business of giving bail as a surety for compensation.*

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

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

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

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

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

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

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

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

(a) General rule.—No professional bondsman shall become surety on any undertaking, and no person shall engage in or continue to engage in business as a professional bondsman, unless he has been registered

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

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

Section 3. Section 5743 of Title 42 is repealed:

§ 5743. **Issuance of license.**

(a) **General rule.**—The Insurance Department, upon receipt of:

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

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

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

(b) **Duration.**—Each license shall be valid for one year following the date of issue.

(c) **Nontransferable.**—No license issued under this subchapter shall be assigned or transferred.]

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

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

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

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

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

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

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

§ 5744. **Office.**

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

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

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

(a) *General rule.*—If the court of common pleas for the county where the bail bondsman is authorized to conduct business has been unable to collect unpaid forfeitures after a period of six months or if a penalty is warranted under section 5750(c) (relating to third-party sureties), the court, upon petition of the county solicitor or district attorney, shall issue an order directing the department to:

- (1) prohibit the renewal of a license of the bail bondsman; or
- (2) immediately suspend the license of the bail bondsman.

(b) *Notice to bail bondsman and insurer.*—Prior to the issuance of an order to suspend or nonrenew a license, the bail bondsman and insurer who issued the qualifying power of attorney shall both be given advance notice by certified mail, return receipt requested. The notice shall specify all of the following:

(1) The amount of forfeitures and penalties under section 5750(c)(2)(i), if applicable.

(2) How, when and where the notice can be contested.

(3) That the grounds for contesting the notice shall be limited to mistakes of fact. Mistakes of fact shall be limited to errors in the amount of forfeitures owed or mistaken identity of the bail bondsman as the person who was subject to the bail forfeiture order.

(4) That an order to the department to automatically suspend or nonrenew the license will occur in all cases 30 days after delivery of the notice by certified mail, return receipt requested, unless the amount of forfeitures and penalties, providing the basis for issuance of the order, is paid, a periodic payment schedule is approved by the court or the individual is excused from payment due to a mistake of fact.

(c) *Order.*—The following shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Section 5747 of Title 42 is repealed:

§ 5747. **Statements by fidelity or surety companies.**

Any fidelity or surety company, authorized to act as surety within this Commonwealth, may execute an undertaking as surety by the hand of an officer, employee, agent, or attorney, authorized thereto by a resolution of its board of directors, a certified copy of which, under its corporate seal, shall be filed with the undertaking. Fidelity or surety companies engaged in the business of entering bail shall file, with the clerk of the court of common pleas and with the district attorney of each

county in which bail is entered, a statement, quarterly on which shall appear a summary of all bail entered by such company during the previous quarter, together with the compensation charged therefor.]

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

§ 5747.1. Forfeited undertaking.

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

(b) *Payment.*—The following shall apply:

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

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

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

(4) *The office of the clerk shall provide a summary quarterly statement of all overdue forfeited undertakings which have not been paid by each bail bondsman and insurer. The bail bondsman or insurer shall be afforded 30 days from the date of the statement to render payment of the forfeited undertakings. Failure to render payment by close of business on the 31st day shall result in suspension of the ability to conduct business of both the bail bondsman and the insurer in that judicial district until such time as payment is rendered in full. The bail bondsman may be subject to formal suspension or nonrenewal proceedings pursuant to section 5746. In addition, the insurer may be*

subjected to further administrative penalties, to be determined by the department, consistent with the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act, or other applicable law.

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

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

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

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

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

Section 8. Section 5748 of Title 42 is repealed:

§ 5748. Maximum premiums.

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

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

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

§ 5748.1. *Private cause of action.*

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

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

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

§ 5749. Prohibitions and penalties.

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

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

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

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

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

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

Section 11. Title 42 is amended by adding a section to read:

§ 5750. *Third-party sureties.*

(a) *Responsibilities.*—*A third-party surety must report a violation of a bail bond condition if the violation is related to any of the following:*

(1) *A stay away order issued by a magisterial district judge, court of common pleas or other judicial officer.*

(2) *An order issued by a magisterial district judge, court of common pleas or other judicial officer under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).*

(3) *An act that constitutes a crime of victim or witness intimidation as provided under 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or victims).*

(4) *An act which would constitute a misdemeanor or felony under the following:*

(i) *18 Pa.C.S. Ch. 25 (relating to criminal homicide).*

(ii) *18 Pa.C.S. Ch. 27 (relating to assault).*

(iii) *18 Pa.C.S. Ch. 29 (relating to kidnapping).*

(iv) *18 Pa.C.S. Ch. 31 (relating to sexual offenses).*

(v) *30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).*

(vi) *The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) in cases involving bodily injury.*

(vii) *75 Pa.C.S. § 3732 (relating to homicide by vehicle).*

(viii) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

(ix) 75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

(5) A crime eligible for sentencing under section 9714(g) (relating to sentences for second and subsequent offenses).

(b) Reporting.—

(1) A third-party surety must:

(i) report a violation under subsection (a) within 24 hours after receiving notice of the violation, verbally or in writing, to the law enforcement agency in the jurisdiction responsible for the criminal case or where the violation occurred; and

(ii) confirm in writing to the office of the attorney for the Commonwealth responsible for prosecution of the case for which the defendant was admitted to bail within 48 hours of making the initial report to a law enforcement agency.

(2) The written confirmation under paragraph (1)(ii) must include the name of the defendant, the name of the third-party surety, the date of the violation, the date and time the third-party surety learned of the violation, the name of the law enforcement agency receiving the report and the date and time the third-party surety reported the violation to the law enforcement agency.

(3) The requirement under paragraph (1)(ii) may be satisfied by hand delivery, United States mail, facsimile or electronic mail.

(c) Penalty.—

(1) Except as provided under paragraph (4), a third-party surety who fails to comply with subsections (a) and (b) may be subject to a civil penalty if the attorney for the Commonwealth demonstrates that:

(i) the unreported violation of a condition identified under subsection (a) resulted in bodily injury or property damage in excess of \$10,000; and

(ii) Either of the following apply:

(A) The terms of the bail condition are known to the third-party surety prior to bodily injury or property damage being sustained and the third-party surety received notice of the violation of the condition with sufficient reasonable time to make the report prior to the bodily injury or property damage being sustained.

(B) The third-party surety's failure to discover and report the violation was due to willful disregard to the safety of a witness, victim or the general public in circumstances related to the conditions under subsection (a).

(2) If a court of common pleas imposes a penalty under paragraph (1), a third-party surety shall be assessed a civil penalty in an amount of not less than \$500 nor more than \$5,000. The following shall apply:

(i) If the attorney for the Commonwealth is able to demonstrate that the third-party surety is a bail bondsman and the penalty is not paid within 90 days of being imposed, the court shall suspend the authority of the bail bondsman to operate as a bail bondsman in the county for 60 days and shall provide notice of the suspension to the

surety insurer associated with the bail bondsman. If the penalty remains unpaid at the conclusion of the suspension, the attorney for the Commonwealth shall commence license revocation procedures under section 5745 (relating to suspension or nonrenewal of license for unpaid bail forfeitures) or 5746 (relating to suspension or revocation of authority to conduct business in a county).

(ii) Any funds received as a civil penalty under this paragraph must be retained and be used by the district attorney to provide victim services.

(3) If the third-party surety is a bail bondsman and has been penalized under paragraph (2) for three or more violations in a two-year period, the attorney for the Commonwealth may commence an action to revoke the bail bondsman's ability to conduct business under section 5745 or 5746.

(4) A civil penalty may not be assessed and a license suspension or revocation may not be imposed against a third-party surety for any of the following:

(i) Failure to report a known violation under subsection (a), if the third-party surety provides evidence that the violation was reported to a law enforcement agency under subsection (b).

(ii) Lack of knowledge of the bail conditions, if the third-party surety provides evidence that the third-party surety attempted to obtain information about the bail conditions which went unanswered or refused or that the bail conditions were altered subsequent to the defendant's release and the third-party surety lacked information about the amended conditions.

(iii) Willful disregard to the safety of a witness, victim or the general public, if:

(A) the third-party surety provides evidence that the third-party surety reviewed the bail conditions with the defendant within 24 hours of release and during instances of contact between the third-party surety and the defendant; and

(B) if the defendant indicated a willingness to commit a violation under subsection (a), the third-party surety reported the risk to the attorney for the Commonwealth or the law enforcement agency, if the attorney for the Commonwealth is unavailable.

(d) Bail forfeiture.—Nothing under this section shall preclude the attorney for the Commonwealth from seeking a bail forfeiture directly from the defendant.

(e) Applicability.—This section shall apply to third-party sureties.

Section 12. A person licensed as a professional bondsman prior to the effective date of this act shall be licensed as an insurance producer in accordance with Article VI-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

Section 13. This act shall take effect in 120 days.

APPROVED—The 2nd day of July, A.D. 2015

TOM WOLF