

1 **H. B. 4434**

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3 (By Delegates Barrett, Morgan, Guthrie, Reynolds,
4 Caputo, Iaquina and Diserio)

5 [Introduced February 7, 2014; referred to the
6 Committee on the Judiciary.]

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10 A BILL to amend and reenact §51-10-1, §51-10-2, §51-10-3, §51-10-4,
11 §51-10-5, §51-10-6, §51-10-7, §51-10-8, §51-10-9 and
12 §51-10-10 of the Code of West Virginia, 1931, as amended; and
13 to amend said code by adding thereto a new section, designated
14 §51-10-5a, all relating generally to bail bondsmen in criminal
15 cases; defining terms; granting the Insurance Commissioner of
16 West Virginia licensing and regulatory authority; setting
17 forth additional qualifications; setting forth licensing
18 requirements; setting forth bonding requirements; requiring
19 notice be given; prohibiting certain persons from recommending
20 specific bondsmen; increasing a monetary penalty; and making
21 stylistic changes.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §51-10-1, §51-10-2, §51-10-3, §51-10-4, §51-10-5,
24 §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10 of the

1 Code of West Virginia, 1931, as amended, be amended and reenacted;
2 and that said code be amended by adding thereto a new section,
3 designated §51-10-5a, all to read as follows:

4 **ARTICLE 10. ~~PROFESSIONAL~~ BAIL BONDSMEN IN CRIMINAL CASES.**

5 **§51-10-1. Definitions.**

6 For the purposes of this article the following terms have the
7 following definitions:

8 ~~The words "Bonding business" as used in this article mean~~
9 "Bonding business" means the business of becoming surety for
10 compensation upon bonds in criminal cases in the State of West
11 Virginia. and the word "bondsman"

12 "Bail bondsman" means any person or corporation engaged either
13 as principal or as agent, clerk, or representative of another in
14 such business who has satisfied the requirements for being a
15 property and casualty insurance producer as set forth by the
16 Insurance Commissioner of West Virginia and who furnishes to the
17 commissioner either a qualifying power of attorney issued by an
18 authorized insurer or sufficient collateral to qualify as
19 self-insurer.

20 "Insurer" means any domestic, foreign or alien surety company
21 which has been qualified generally to transact surety business in
22 the State of West Virginia.

23 "Self-insurer" means any person engaged in the bonding
24 business as a bail bondsman who pledges his or her own property as

1 collateral for the bonds on which they serve as surety for
2 compensation. The aggregate sum of liability for the total amount
3 of bonds provided by such a person may not exceed two times the
4 amount of collateral.

5 **§51-10-2. Business impressed with public interest.**

6 The business of becoming surety for compensation upon bonds in
7 criminal cases ~~in the State of West Virginia~~ is impressed with a
8 public interest. In order to become eligible for licensure by the
9 Insurance Commissioner of West Virginia as a property and casualty
10 producer eligible to provide bail bonds in criminal cases, each
11 applicant must submit, with their application for the same, a
12 criminal history background check. That background check shall be
13 free from any criminal charge indicating they are a person of poor
14 character.

15 **§51-10-3. Procuring business through official or attorney for**
16 **consideration prohibited.**

17 (a) It shall be unlawful for any person engaged, either as
18 principal or as the clerk, agent, or representative of a
19 corporation, or another person in the business, ~~of becoming surety~~
20 ~~upon bonds for compensation in the State of West Virginia~~, either
21 directly or indirectly, to give, donate, lend, contribute, or to
22 promise to give, donate, loan, or contribute any money, property,
23 entertainment, or other thing of value ~~whatsoever~~ to any attorney
24 at law, police officer, sheriff, deputy sheriff, constable, jailer,

1 probation officer, clerk, or other attache of a criminal court, or
2 public official of any character, for procuring or assisting in
3 procuring any person to employ said bondsman to execute as surety
4 any bond for compensation in any criminal case in the State of West
5 Virginia. ~~and it shall be~~

6 (b) It is unlawful for any attorney at law, police officer,
7 sheriff, deputy sheriff, constable, jailer, probation officer,
8 clerk, bailiff, or other attache of a criminal court, or public
9 official, ~~of any character~~, to accept or receive from any such
10 person engaged in the bonding business any money, property,
11 entertainment, or other thing of value whatsoever for procuring or
12 assisting in procuring any person to employ any bondsman to execute
13 as surety any bond for compensation in any criminal case. ~~in the~~
14 ~~State of West Virginia.~~

15 **§51-10-4. Attorneys procuring employment through official or**
16 **bondsman for consideration prohibited.**

17 It ~~shall be~~ is unlawful for any attorney at law, either
18 directly or indirectly, to give, loan, donate, contribute, or to
19 promise to give, loan, donate, or contribute any money, property,
20 entertainment, or other thing of value ~~whatsoever~~ to, or to split
21 or divide any fee or commission with, any bondsman, police officer,
22 sheriff, deputy sheriff, constable, probation officer, assistant
23 probation officer, bailiff, clerk or other attache of any criminal
24 court for causing or procuring or assisting in causing or procuring

1 any person to employ ~~such~~ the attorney to represent him or her in
2 any criminal case. ~~in the State of West Virginia.~~

3 **§51-10-5. Receiving other than regular fee for bonding**
4 **prohibited; bondsman prohibited from endeavoring to**
5 **secure dismissal or settlement.**

6 ~~It shall be~~ (a) It is lawful to charge a premium for executing
7 any bond in a criminal case in the State of West Virginia. ~~and it~~
8 ~~shall be~~

9 (b) It is unlawful for any person or corporation engaged in
10 the bonding business, either as principal, or clerk, agent or
11 representative of another, either directly or indirectly, to
12 charge, accept, or receive any sum of money, or other thing of
13 value, other than the bonding fee from any person for whom he or
14 she has executed bond, for any other service whatever performed in
15 connection with any indictment or charge upon which said person is
16 bailed or held in the State of West Virginia, or in any counties
17 where the court has regulated bonding fees pursuant to section
18 ~~eight~~ nine of this article. ~~it shall be~~

19 (c) It is unlawful for any person or corporation engaged in
20 the bonding business, either as principal, clerk, agent, or
21 representative of another, either directly or indirectly, to
22 charge, accept, or receive any sum of money or other thing of value
23 other than the duly authorized maximum bonding fee, from any person
24 for whom he or she has executed bond, for any other service

1 whatever performed in connection with any indictment or charge upon
2 which said person is bailed or held in the State of West Virginia.

3 ~~It also shall be~~ (d) It is unlawful for any person or
4 corporation engaged either as principal or as agent, clerk, or
5 representative of another in the bonding business, to settle, or
6 attempt to settle, or to procure or attempt to procure the
7 dismissal of any indictment, information, or charge against any
8 person in custody or held upon bond in the State of West Virginia,
9 with any court, or with the prosecuting attorney, or with any
10 police officer in any court in the State of West Virginia.

11 **§51-10-5a. Premium and collateral security required by bondsmen.**

12 (a) The premium required by bail bondsmen shall be at least
13 ten percent of the amount of the bond. Collateral security,
14 including personal property, real property, indemnity agreement and
15 guarantee, received by that licensee may not, in the aggregate,
16 exceed the amount of the bond.

17 (1) A three percent down payment is required prior to the
18 issuance of bond.

19 (2) If credit terms are given the remaining premium shall be
20 paid over the next twelve months.

21 (3) The aggregate sum for the total amount of bonds provided
22 may not exceed two times the amount of collateral.

23 (b) Whenever collateral is received by a bail bondsman a
24 receipt shall be furnished to the defendant or indemnitors. Copies

1 of all receipts issued shall be kept by the bail bondsman. All
2 receipts issued shall:

3 (1) Be prenumbered by the printer and used and filed in
4 consecutive numerical order;

5 (2) Show the name, address and phone number of the bail
6 bondsman;

7 (3) Show the amount and description of collateral and date
8 received;

9 (4) Show the name of the person accepting collateral; and,

10 (5) Show the total amount of the bond for which the collateral
11 is being accepted and the name of the defendant.

12 (c) When the defendant fails to appear in court and the bond
13 is for forfeited, the court shall notify the bail bondsman within
14 seven days of failure to appear.

15 **§51-10-6. Posting names of authorized bondsmen; list to be**
16 **furnished prisoners; prisoner may communicate with**
17 **bondsman; record to be kept by police.**

18 ~~A typewritten or printed list alphabetically arranged (a) An~~
19 ~~alphabetical list of all persons engaged under the authority of any~~
20 ~~courts of record pursuant to section eight of this article, in the~~
21 ~~business of becoming surety on the bonds for compensation in the~~
22 ~~bail bonding business and licensed by the Insurance Commissioner of~~
23 ~~West Virginia shall be posted in a conspicuous place in each police~~
24 ~~precinct, jail, prisoner's dock, house of detention, municipal~~

1 court, and ~~justice of the peace court within the county, and one or~~
2 ~~more copies thereof kept on hand; and when~~ magistrate court and
3 copies shall be kept on hand.

4 (b) When any person who is detained in custody in any ~~such~~
5 place of detention ~~shall request any person in charge thereof to~~
6 ~~furnish him the name of a bondsman, or to put him in communication~~
7 ~~with a bondsman,~~ said requests bail bondsmen information, the
8 alphabetical list shall be furnished to the person. ~~so requesting,~~
9 ~~and it shall be the duty of the~~ The person in charge of ~~said the~~
10 place of detention shall within a reasonable time to put the person
11 so detained in communication with the bondsman ~~so~~ selected by the
12 person in detention, and the person in charge of ~~said the~~ place of
13 detention shall contemporaneously with said transaction make in the
14 blotter or book of record kept in any such place of detention, a
15 record showing the name of the person requesting the bondsman, the
16 offense with which ~~the said that~~ that person is charged, the time at
17 which the request was made, the bondsman requested, and the person
18 by whom the said bondsman was called, and preserve the same as a
19 permanent record in the book or blotter in which entered.

20 (c) The person in charge or any other employee, contractor,
21 agent, assign or staff member of the place of detention may not
22 make any recommendation to the person in detention regarding a
23 preference for a bondsman.

24 **§51-10-7. Bondsman prohibited from entering place of detention**

1 **unless requested by prisoner; record of visit to be**
 2 **kept.**

3 ~~It shall be~~ (a) It is unlawful for any bondsman, agent, clerk,
 4 or representative of any bondsman to enter a police precinct, jail,
 5 prisoner's dock, house of detention, ~~justice of the peace~~
 6 magistrate court, or other place where persons in the custody of
 7 the law are detained: ~~in the State of West Virginia, for~~

8 (1) For the purpose of obtaining employment as a bondsman.

9 ~~without~~ (2) Without having been previously called by a person
 10 so detained, or by some relative or other authorized person acting
 11 for or on behalf of the person so detained. ~~and whenever~~

12 (3) When any person engaged in the bonding business as
 13 principal, or as clerk, or representative of another, ~~shall enter~~
 14 enters a police precinct, jail, prisoner's dock, house of
 15 detention, ~~justice of the peace~~ magistrate court, or other place
 16 where persons in the custody of the law are detained, ~~in the State~~
 17 ~~of West Virginia~~ he or she shall ~~forthwith~~ give to the person in
 18 charge ~~thereof~~ his or her ~~mission there~~ purpose, the name of the
 19 person calling him or her, and requesting ~~him~~ that he or she to come
 20 ~~to such place, there~~ and ~~the same~~ that person shall be recorded by
 21 the person in charge of the ~~said~~ place of detention and preserved
 22 as a public record. ~~and the failure~~

23 (b) Failure to ~~give such~~ to provide the information, or the
 24 failure of the person in charge of ~~said~~ the place of detention to

1 make and preserve such a record, ~~shall constitute~~ is a violation of
2 this article.

3 **§51-10-8. Qualifications of bondsmen; rules to be prescribed by**
4 **~~Supreme Court of Appeals~~ the Commissioner of**
5 **Insurance; lists of agents to be furnished; renewal**
6 **of authority to act; false swearing.**

7 (a) The ~~Supreme Court of Appeals~~ Insurance Commissioner of
8 West Virginia shall, under reasonable rules, specify the
9 qualifications of persons and corporations applying for authority
10 to engage in the bonding business in criminal cases in the State of
11 West Virginia, and the terms and conditions upon which the business
12 may be carried on. After September 1, 2004, no person or
13 corporation may, either as principal, or as agent, clerk, or
14 representative of another, engage in the bonding business in any
15 court regularly exercising criminal jurisdiction until qualified
16 pursuant to the rules. The Supreme Court of Appeals, in making the
17 rules, and in granting authority to persons to engage in the
18 bonding business, shall take into consideration both the financial
19 responsibility and the moral qualities of the person so applying,
20 and no person may be permitted to engage, either as principal or
21 agent, in the business of becoming surety upon bonds for
22 compensation in criminal cases, who has ever been convicted of any
23 offense involving moral turpitude, or who is not known to be a

1 person of good moral character. The court shall require every
2 person qualifying to engage in the bonding business as principal to
3 file with the court a list showing the name, age, and residence of
4 each person employed by the bondsman as agent, clerk, or
5 representative in the bonding business, and require an affidavit
6 from each of the persons stating that the person will abide by the
7 terms and provisions of this article. The court shall require the
8 authority of each of the persons to be renewed from time to time at
9 periods the court may by rule provide. Before the authority may be
10 renewed the court shall require from each of the persons an
11 affidavit that since his or her previous qualifications to engage
12 in the bonding business he or she has abided by the provisions of
13 this article, and any person swearing falsely in any of the
14 affidavits is guilty of false swearing.

15 ~~(b) Persons authorized to engage in the bonding business in~~
16 ~~criminal cases in the State of West Virginia on the effective date~~
17 ~~of the amendments made to this section during the regular session~~
18 ~~of the Legislature in 2004 may continue to engage in the business~~
19 ~~until September 1, 2004.~~

20 (b) The Insurance Commissioner shall issue a license to
21 provide bail bonds for compensation to each individual who meets
22 the following requirements:

23 (1) Satisfactorily completes all necessary licensing
24 requirements of a property and casualty insurance producers,

1 (2) Provides a qualifying power of attorney from an insurer or
2 delivers a mortgage or lien on real property or negotiable
3 instruments, upon which he or she may provide bail bonds equivalent
4 to two times the amount of the collateral.

5 (c) Provides a criminal background check summary which
6 displays the moral qualities of the person so applying,
7 demonstrates that no person applying has been permitted to engage,
8 either as principal or agent, in the business of becoming surety
9 upon bonds for compensation in criminal cases, if he or she has
10 ever been convicted of any offense involving moral turpitude,
11 fraud, dishonesty or theft.

12 (d) The Insurance Commissioner shall require every person duly
13 qualified to engage in the bonding business as a principal to file
14 with the courts where they intend to conduct business a list
15 showing the name, age, and residence of each person employed by the
16 bondsman as agent, clerk, or representative in the bonding
17 business, and require an affidavit from each person stating that he
18 or she will comply with this article.

19 **§51-10-9. Penalties.**

20 Any person violating any provisions of this article other than
21 in the commission of false swearing shall be punished by a fine of
22 not more than ~~\$100,~~ \$2,000, or by ~~imprisonment~~ confinement not
23 exceeding six months in ~~the county~~ jail, or both fined and
24 confined, where no other penalty is provided by this article; and

1 if the person so convicted be a police officer or other public
2 official, he or she shall upon recommendation of the judge of the
3 criminal court of record of the county to which this article is
4 applicable also be forthwith removed from office; if a bondsman, or
5 the agent, clerk, or representative of a bondsman, he or she shall
6 be disqualified from thereafter engaging in any manner in the
7 bonding business for such a period of time as the judge of the
8 criminal court of record of the county to which this article is
9 applicable shall order; and, if an attorney at law, shall be
10 subject to suspension or disbarment as attorney at law.

11 **§51-10-10. Enforcement of article.**

12 It shall be the duty of the judges of the criminal courts of
13 record, the municipal courts, the ~~justices of the peace~~ magistrate
14 courts of the county where a person authorized to engage in the
15 bail bonding business conducts his or her business to which this
16 article is applicable, to see that this article is enforced, and
17 upon the impaneling of each grand jury in the State of West
18 Virginia it shall be the duty of the judge impaneling said jury to
19 give it in charge to the jury to investigate the manner in which
20 this article is enforced and all violations thereof.

NOTE: The purpose of this bill is to update generally bail
bondsmen requirements in criminal cases. The bill defines terms.
The bill grants the Insurance Commissioner of West Virginia
licensing and regulatory authority. The bill sets forth additional
qualifications. The bill sets forth licensing requirements. The

bill sets forth bonding requirements. The bill requires notice be given. The bill prohibits certain persons from recommending specific bondsmen. The bill increases a monetary penalty. The bill makes stylistic changes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§51-10-5a is new; therefore, it has been completely underscored.