

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2621

By Delegates Burkhammer, Foster and Hott

[Originating in the Committee on the Judiciary;

Reported on January 1, 2023]

1 A BILL to amend and reenact §51-10-1 and §51-10-8 of the Code of West Virginia, 1931, as
2 amended, all relating to professional bondsmen in criminal cases; definitions of "approved
3 securities" and "bondsmen"; and requiring the Insurance Commissioner to formulate
4 testing and continuing education requirements for all applicants and license renewals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.

CHAPTER 33 INSURANCE

ARTICLE 1. DEFINITIONS

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not mutually exclusive and, if reasonably
2 adaptable thereto, a particular coverage may be included under one or more of such definitions:

3 (a) *Life insurance.* — Life insurance is insurance on human lives including endowment
4 benefits, additional benefits in the event of death or dismemberment by accident or accidental
5 means, additional benefits for disability and annuities.

6 (b) *Accident and sickness.* — Accident and sickness insurance is insurance against bodily
7 injury, disability or death by accident or accidental means, or the expense thereof, or against
8 disability or expense resulting from sickness and insurance relating thereto. Group credit accident
9 and health insurance may also include loss of income insurance which is insurance against the
10 failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For
11 the purposes of this definition, involuntary loss of employment means the debtor loses
12 employment income (salary or wages) as a result of unemployment caused by individual or mass
13 layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or
14 criminal misconduct. Any or all of the above-mentioned perils may be included in an insurance
15 policy, at the discretion of the policyholder.

16 (c) *Fire*. — Fire insurance is insurance on real or personal property of every kind and
17 interest therein, against loss or damage from any or all hazard or cause, and against loss
18 consequential upon such loss or damage, other than noncontractual liability for any such loss or
19 damage. Fire insurance shall also include miscellaneous insurance as defined in ~~paragraph (12),~~
20 ~~subdivision (e) of this section~~ §33-1-10(e)(12) of this code.

21 (d) *Marine insurance is insurance:*

22 (1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles
23 and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects,
24 disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences
25 of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and
26 interests therein, in respect to, appertaining to or in connection with any and all risks or perils of
27 navigation, transit or transportation, including war risks, on or under any seas or other waters, on
28 land (above or below ground), or in the air, or while being assembled, packed, crated, baled,
29 compressed or similarly prepared for shipment or while awaiting the same or during any delays,
30 storage, transshipment, or reshipment incident thereto, including marine builders' risks and all
31 personal property floater risks;

32 (2) Against any and all kinds of loss or damage to person or to property in connection with
33 or appertaining to a marine, inland marine, transit or transportation insurance, including liability for
34 loss of or damage to either, arising out of or in connection with the construction, repair, operation,
35 maintenance or use of the subject matter of such insurance (but not including life insurance or
36 surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the
37 ownership, maintenance or use of automobiles);

38 (3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold,
39 silver and other precious metals, whether used in business or trade or otherwise and whether the
40 same be in course of transportation or otherwise;

41 (4) Against any and all kinds of loss or damage to bridges, tunnels and other
42 instrumentalities of transportation and communication (excluding buildings, their furniture and
43 furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage,
44 hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be
45 covered;

46 (5) Against any and all kinds of loss or damage to piers, wharves, docks and ships,
47 excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil
48 commotion and each of them;

49 (6) Against any and all kinds of loss or damage to other aids to navigation and
50 transportation, including dry docks and marine railways, dams and appurtenant facilities for
51 control of waterways; and

52 (7) Marine protection and indemnity insurance, which is insurance against, or against legal
53 liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership,
54 operation, chartering, maintenance, use, repair or construction of any vessel, craft or
55 instrumentality in use in ocean or inland waterways, including liability of the insured for personal
56 injury, illness or death or for loss of or damage to the property of another person.

57 (e) *Casualty*. — Casualty insurance includes:

58 (1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or
59 aircraft or any draft or riding animal or to property while contained therein or thereon or being
60 loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense
61 resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal;
62 together with insurance against accidental death or accidental injury to individuals, including the
63 named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by
64 being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of
65 insurance on the vehicle, aircraft or draft or riding animal;

66 (2) Liability insurance, which is insurance against legal liability for the death, injury or
67 disability of any human being, or for damage to property; and provisions for medical, hospital,
68 surgical, disability benefits to injured persons and funeral and death benefits to dependents,
69 beneficiaries or personal representatives of persons killed, irrespective of legal liability of the
70 insured, when issued as an incidental coverage with or supplemental to liability insurance;

71 (3) Burglary and theft insurance, which is insurance against loss or damage by burglary,
72 theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful
73 conversion, disposal or concealment, or from any attempt at any of the foregoing, including
74 supplemental coverages for medical, hospital, surgical and funeral benefits sustained by the
75 named insured or other person as a result of bodily injury during the commission of a burglary,
76 robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion,
77 securities, notes, drafts, acceptances or any other valuable papers and documents resulting from
78 any cause;

79 (4) Personal property floater insurance, which is insurance upon personal effects against
80 loss or damage from any cause;

81 (5) Glass insurance, which is insurance against loss or damage to glass, including its
82 lettering, ornamentation and fittings;

83 (6) Boiler and machinery insurance, which is insurance against any liability and loss or
84 damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure
85 containers, machinery or apparatus and to make inspection of and issue certificates of inspection
86 upon boilers, machinery and apparatus of any kind, whether or not insured;

87 (7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or
88 damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps
89 and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by
90 water entering through leaks or openings in buildings, and insurance against loss or damage to
91 such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

92 (8) Credit insurance, which is insurance against loss or damage resulting from failure of
93 debtors to pay their obligations to the insured. Credit insurance shall include loss of income
94 insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due
95 to involuntary loss of employment. For the purpose of this definition, involuntary loss of
96 employment means the debtor loses employment income (salary or wages) as a result of
97 unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or
98 termination by employer for other than willful or criminal misconduct; any or all of the above-
99 mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

100 (9) Malpractice insurance, which is insurance against legal liability of the insured and
101 against loss, damage or expense incidental to a claim of such liability, and including medical,
102 hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured
103 arising out of the death, injury or disablement of any person, or arising out of damage to the
104 economic interest of any person, as the result of negligence in rendering expert, fiduciary or
105 professional service;

106 (10) Entertainment insurance, which is insurance indemnifying the producer of any motion
107 picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or
108 exhibition against loss from interruption, postponement or cancellation thereof due to death,
109 accidental injury or sickness of performers, participants, directors or other principals;

110 (11) Mine subsidence insurance as provided for in article thirty of this chapter;

111 (12) Miscellaneous insurance, which is insurance against any other kind of loss, damage
112 or liability properly a subject of insurance and not within any other kind of insurance as defined in
113 this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or
114 public policy; and

115 (13) Federal flood insurance, which is insurance provided by the federal insurance
116 administration or by private insurers through the write your own program within the national flood
117 insurance program, instituted by the federal insurance administration pursuant to the provision of

118 42 U.S.C. §4071, on real or personal property of every kind and interest therein, against loss or
119 damage from flood or mudslide and against loss consequential to such loss or damage, other than
120 noncontractual liability for any loss or damage.

121 (14) Workers' compensation insurance, which is insurance providing all compensation and
122 benefits required by chapter ~~twenty-three~~ 23 of this code.

123 (f) *Surety*. — Surety insurance includes:

124 (1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding
125 positions of public or private trust;

126 (2) Insurance guaranteeing the performance of contracts, other than insurance policies,
127 and guaranteeing and executing bonds, undertakings and contracts of surety ship: *Provided*, That
128 surety insurance does not include the guaranteeing and executing of bonds ~~by professional~~
129 ~~bondsmen in criminal cases~~ or by individuals not in the business of becoming a surety for
130 compensation upon bonds;

131 (3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or
132 associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities,
133 evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents,
134 money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets,
135 gems, precious and semiprecious stones, including any loss while they are being transported in
136 armored motor vehicles or by messenger, but not including any other risks of transportation or
137 navigation, and also insurance against loss or damage to such an insured's premises or to his or
138 her furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft,
139 vandalism or malicious mischief, or any attempt to commit such crimes; and

140 (4) Title insurance, which is insurance of owners of property or others having an interest
141 therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity
142 or adverse claim to title.

§51-10-1. Definitions.

1 When used in this article:

2 "Approved securities" means cash, irrevocable letter of credit, an annuity purchased
3 through an insurance company licensed and in good standing in this state, a bond issued by an
4 insurance company licensed and in good standing in this state, or a qualified power of attorney
5 issued by an insurer pursuant to a producer underwriting agreement, or real estate located in in
6 this state that is unencumbered in, at least, the amount of minimum financial responsibility
7 required as set forth by the insurance commissioner.

8 (4) "Bonding business" means the business of becoming surety for compensation upon
9 bonds in criminal cases in the State of West Virginia;

10 (2) "Bondsman" means (A) any person engaged in the bonding business ~~that has satisfied~~
11 ~~the requirements for, and is duly licensed as, an insurance producer with a property and casualty~~
12 ~~line of authority as set forth by the Insurance Commissioner and §33-12-1, et seq. of this code; or~~
13 (B) any person who is approved and licensed under the provisions of this article who pledges cash
14 or approved securities with the commissioner as security for bail bonds written in connection with a
15 judicial proceeding and receives or is promised money or other things of value for the pledge;

16 (3) "Commissioner" means the Insurance Commissioner of West Virginia, as defined in
17 §33-1-5 of this code; and

18 (4) "Insurer" means any domestic, foreign, or alien person, including a surety company,
19 which has been qualified generally to transact rety business in the State of West Virginia.

**§51-10-8. Qualifications of bondsmen; rules to be prescribed by Insurance Commissioner;
bondsmen filing requirements; bondsman license renewal requirements; criminal
penalty for filing false affidavit; list of bondsmen kept and provided to places of
detention by Insurance Commissioner; requiring all bondsmen to be licensed by
Insurance Commissioner after July 1, 2022.**

2 (a) The commissioner shall promulgate and propose legislative rules for promulgation
3 under §29A-3-1, *et seq.* of this code, to carry out the intent, administration, and enforcement of this
4 article. The commissioner may promulgate any emergency rules under §29A-3-15 of this code
5 necessary to carry out the intent, administration, and enforcement of this article. The
6 commissioner shall develop all forms, contracts, or other documents to be used for the purposes
7 outlined in this article.

8 (b) The rules required by subsection (a) of this section shall specify the qualifications that a
9 person must have when applying to be a bondsman, and the terms and conditions upon which the
10 bonding business may be conducted. The commissioner shall require a biennial fee of \$200 for all
11 bondsmen licensed under this article.

12 (c) The commissioner, in promulgating and proposing rules required by subsection (a) of
13 this section, and in granting a license to a person to engage in the bonding business, shall take into
14 consideration both the financial responsibility and the moral qualities of the person applying, and a
15 person who has been convicted of any offense involving moral turpitude, or who is not known to be
16 a person of good moral character ~~shall~~ may not be licensed.

17 (d) The applicant shall provide the commissioner a qualifying power-of-attorney from a
18 licensed insurer or surety company or pledge cash or approved securities with the commissioner
19 as security for bail bonds.

20 (e) The applicant shall comply with the provisions of §33-12-37 of this code regarding
21 criminal history record checks.

22 (f) The commissioner shall require every bondsman licensed to engage in the bonding
23 business as a principal to file with the commissioner a list showing the name, age, and residence
24 of each person employed by the bondsman as an agent, clerk, or representative in the bonding
25 business, and require an affidavit from each of the persons stating that the person will abide by the
26 terms and provisions of this article.

27 (g) The commissioner shall formulate testing and continuing education requirements for all
28 applicants and license renewals.

29 ~~(g)~~ (h) (1) The commissioner shall require a person licensed as a bondsman to renew his
30 or her license every two years and to file an affidavit stating that since his or her previous license to
31 engage in the bonding business he or she has abided by the provisions of this article.

32 (2) A person who files a false affidavit is guilty of false swearing and, upon conviction
33 thereof, shall be punished as provided by law for the offense.

34 ~~(3) A person seeking to renew his or her license to engage in the bonding business shall~~
35 ~~submit to the property and casualty requirements under section (d) of this section for each~~
36 ~~renewal, unless he or she has voluntarily terminated his or her license to engage in the bonding~~
37 ~~business~~

38 ~~(h)~~ (i) The commissioner shall keep a list of all bondsmen and, upon the request of a place
39 of detention listed under §51-10-6 of this code, furnish an alphabetical list of all licensed
40 bondsmen to the jail.

41 (j) After July 1, 2022, a person ~~shall~~ may not, either as principal, or as agent, clerk, or
42 representative of an agent, engage in the bonding business unless licensed by the commissioner
43 under this section.

NOTE: The purpose of this bill is to require the Insurance Commissioner to formulate testing and continuing education requirements for all applicants and license renewals for professional bondsmen in criminal cases. The bill also provides a definition of "approved securities" and amend the definition of "bondsman".

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