

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2758

BY DELEGATES BARRETT, HOTT, WESTFALL, BATES,

REED, ROWE, L. PACK AND FAST

[Introduced February 24, 2021; referred
to the Committee on Banking and Insurance then the
Judiciary]

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 requiring the Insurance Commissioner to regulate professional
3 bondsmen; providing definitions; requiring the Insurance Commissioner to promulgate and
4 propose rules and regulations to carry out the intent, administration and enforcement of
5 the article; requiring the Insurance Commissioner to promulgate and propose rules and
6 regulations regarding qualifications of bondsman; setting forth requirements for bondsman
7 applicants; setting forth filing requirements for bondsmen with the Insurance
8 Commissioner; setting forth renewal requirements for bondsman authorization; providing
9 criminal penalty for false affidavit; requiring Insurance Commissioner to keep a list of
10 authorized bondsmen and furnish to a place of detention upon request; and, after July 1,
11 2022, requiring all bondsmen to be authorized by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.

§51-10-1. Definitions.

1 ~~The words “bonding business” as used in this article mean the business of becoming~~
2 ~~surety for compensation upon bonds in criminal cases in the State of West Virginia, and the word~~
3 ~~“bondsman” means any person or corporation engaged either as principal or as agent, clerk, or~~
4 ~~representative of another in such business.~~

5 When used in this article:

6 (1) “Bonding business” means the business of becoming surety for compensation upon
7 bonds in criminal cases in the State of West Virginia;

8 (2) “Bondsman” means any person engaged in the bonding business that has satisfied the
9 requirements for, and is duly licensed as, an insurance producer with a property and casualty line
10 of authority as set forth by the Insurance Commissioner and §33-12-1, et seq. of this code;

11 (3) “Commissioner” means the Insurance Commissioner of West Virginia, as defined in
12 §33-1-5 of this code; and

13 (4) “Insurer” means any domestic, foreign or alien person, including a surety company,
14 which has been qualified generally to transact surety business in the State of West Virginia.

§51-10-8. Qualifications of bondsmen; rules to be prescribed by Supreme Court of Appeals; lists of agents to be furnished; renewal of authority to act; false swearing Insurance Commissioner; bondsman filing requirements; bondsman authorization renewal requirements; criminal penalty for filing false affidavit; list of bondsmen kept and provided to places of detention by Insurance Commissioner; requiring all bondsman to be authorized by Insurance Commissioner after July 1, 2022.

1 ~~(a) The Supreme Court of Appeals shall under reasonable rules, specify the qualifications~~
2 ~~of persons and corporations applying for authority to engage in the bonding business in criminal~~
3 ~~cases in the State of West Virginia, and the terms and conditions upon which the business may~~
4 ~~be carried on. After the first day of September, two thousand four, no person or corporation may,~~
5 ~~either as principal, or as agent, clerk, or representative of another, engage in the bonding business~~
6 ~~in any court regularly exercising criminal jurisdiction until qualified pursuant to the rules. The~~
7 ~~Supreme Court of Appeals, in making the rules, and in granting authority to persons to engage in~~
8 ~~the bonding business, shall take into consideration both the financial responsibility and the moral~~
9 ~~qualities of the person so applying, and no person may be permitted to engage, either as principal~~
10 ~~or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who~~
11 ~~has ever been convicted of any offense involving moral turpitude, or who is not known to be a~~
12 ~~person of good moral character. The court shall require every person qualifying to engage in the~~
13 ~~bonding business as principal to file with the court a list showing the name, age, and residence of~~
14 ~~each person employed by the bondsman as agent, clerk, or representative in the bonding~~
15 ~~business, and require an affidavit from each of the persons stating that the person will abide by~~
16 ~~the terms and provisions of this article. The court shall require the authority of each of the persons~~
17 ~~to be renewed from time to time at periods the court may by rule provide. Before the authority~~
18 ~~may be renewed the court shall require from each of the persons an affidavit that since his or her~~

19 ~~previous qualifications to engage in the bonding business he or she has abided by the provisions~~
20 ~~of this article, and any person swearing falsely in any of the affidavits is guilty of false swearing.~~

21 ~~(b) Persons authorized to engage in the bonding business in criminal cases in the State~~
22 ~~of West Virginia on the effective date of the amendments made to this section during the regular~~
23 ~~session of the Legislature in two thousand four may continue to engage in the business until the~~
24 ~~first day of September, two thousand four.~~

25 (a) The commissioner shall promulgate and propose rules and regulations under §29A-3-
26 1, et seq. of this code to carry out the intent, administration, and enforcement of this article. The
27 commissioner shall promulgate any emergency rules and regulations under §29A-3-15 necessary
28 to carry out the intent, administration and enforcement of this article. The commissioner shall
29 develop all forms, contracts or other documents to be used for the purposes outlined in this article.

30 (b) The rules and regulations required by subsection (a) of this section shall specify the
31 qualifications that a person must have when applying for authority to engage in the bonding
32 business, and the terms and conditions upon which the bonding business may be conducted. The
33 commissioner shall require a biennial fee of \$200 for all bondsman authorized under this article.

34 (c) The commissioner, in promulgating and proposing rules and regulations required by
35 subsection (a) of this section, and in granting authority to persons to engage in the bonding
36 business, shall take into consideration both the financial responsibility and the moral qualities of
37 the person applying, and no person may be authorized to engage, either as principal or agent, in
38 the bonding business, who has ever been convicted of any offense involving moral turpitude, or
39 who is not known to be a person of good moral character.

40 (d) The applicant shall provide the commissioner a qualifying power-of-attorney from a
41 licensed insurer or surety company.

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

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

49 (g) (1) The commissioner shall require a person authorized as a bondsman to renew his
50 or her authorization every two years and to file an affidavit stating that since his or her previous
51 authorization to engage in the bonding business he or she has abided by the provisions of this
52 article.

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

55 (3) A person seeking to renew his or her authorization to engage in the bonding business
56 is required to submit to the property and casualty licensing procedures for a second time, unless
57 he or she has voluntarily terminated his or her authorization to engage in the bonding business.

58 (h) The commissioner shall keep a list of all bondsmen and, upon the request of a place
59 of detention listed under §51-10-6 of this code, furnish an alphabetical list of all authorized
60 bondsmen to such place of detention.

61 (i) After July 1, 2022, no person may, either as principal, or as agent, clerk, or
62 representative of another, engage in the bonding business unless authorized by the commissioner
63 under this section.

NOTE: The purpose of this bill is to provide for the regulation of the bail bondsmen business by the Insurance Commissioner.

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