

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2944**

BY DELEGATES BARRETT, HOUSEHOLDER, OVERINGTON,

CANESTRARO AND ROBINSON

[Introduced March 13, 2017; 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, as amended,  
2 all relating to requiring the Insurance Commissioner to regulate professional bondsmen.

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

1 That §51-10-1 and §51-10-8 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted, all to read as follows:

**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;

8 (2) "Bail bondsman" means any person engaged in the bonding business that has satisfied  
9 the requirements for being a property and casualty insurance producer as set forth by the  
10 Insurance Commission;

11 (3) "Commissioner" means the Insurance Commissioner;

12 (4) "Insurer" means any domestic, foreign or alien surety company which has been  
13 qualified generally to transact surety business; and

14 (5) "Self-insurer" means any person engaged in the bonding business as a bail bondsman  
15 who pledges his or her own property as collateral for the bonds on which they serve as surety for  
16 compensation.

**§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.**

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 September 1, 2004, no person or corporation may, either as principal, or as~~  
5 ~~agent, clerk, or representative of another, engage in the bonding business in any court regularly~~  
6 ~~exercising criminal jurisdiction until qualified pursuant to the rules. The Supreme Court of Appeals,~~  
7 ~~in making the rules, and in granting authority to persons to engage in the bonding business, shall~~  
8 ~~take into consideration both the financial responsibility and the moral qualities of the person so~~  
9 ~~applying, and no person may be permitted to engage, either as principal or agent, in the business~~  
10 ~~of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted~~  
11 ~~of any offense involving moral turpitude, or who is not known to be a person of good moral~~  
12 ~~character. The court shall require every person qualifying to engage in the bonding business as~~  
13 ~~principal to file with the court a list showing the name, age, and residence of each person~~  
14 ~~employed by the bondsman as agent, clerk, or representative in the bonding business, and~~  
15 ~~require an affidavit from each of the persons stating that the person will abide by the terms and~~  
16 ~~provisions of this article. The court shall require the authority of each of the persons to be renewed~~  
17 ~~from time to time at periods the court may by rule provide. Before the authority may be renewed~~  
18 ~~the court shall require from each of the persons an affidavit that since his or her previous~~  
19 ~~qualifications to engage in the bonding business he or she has abided by the provisions of this~~  
20 ~~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 2004 may continue to engage in the business until September 1,~~  
24 ~~2004.~~

25           (a) The commissioner shall propose for legislative promulgation, rules he or she considers  
26 necessary to carry out the intent, the administration and enforcement of this article, which rules

27 shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.

28 (b) The rules shall specify the qualifications persons must have when applying for authority  
29 to engage in the bonding business in criminal cases in West Virginia, and the terms and conditions  
30 upon which the business may be carried on.

31 (c) The commissioner, in making the rules, and in granting authority to persons to engage  
32 in the bonding business, shall take into consideration both the financial responsibility and the  
33 moral qualities of the person applying, and no person may be authorized to engage, either as  
34 principal or agent, in the business of becoming surety upon bonds for compensation in criminal  
35 cases, who has ever been convicted of any offense involving moral turpitude, or who is not known  
36 to be a person of good moral character.

37 (d) The applicant shall provide a qualifying power of attorney from an insurer or deliver a  
38 mortgage or lien on real property or negotiable instruments, upon which he or she may provide  
39 bail bonds equivalent to two times the amount of the collateral. The limitations do not apply where  
40 a qualified power of attorney is provided by a regulated insurer or surety company.

41 (e) The applicant shall provide a criminal background check summary which displays the  
42 moral qualities of the person so applying.

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

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

51 (2) A person swearing falsely in an affidavit required by this section is guilty of false  
52 swearing.

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

56 (h) A person operating as a self- insured producer shall provide a monthly report indicating:

57 (1) The total number of bail bonds provided in the preceding month; and

58 (2) The value of those bonds and the total amount of outstanding collateral remaining upon  
59 which bonds may be secured. If the total value of bonds exceeds two times the value of the  
60 collateral, the bondsman shall cease operating until the following quarter when he or she provides  
61 a report to the commissioner indicating unencumbered collateral exists to secure the bonds  
62 provided by him or her.

63 (i) The commissioner shall furnish an alphabetical list of all authorized bail bondsmen to  
64 each place of detention.

65 (j) After September 1, 2017, no person may, either as principal, or as agent, clerk, or  
66 representative of another, engage in the bonding business in any court regularly exercising  
67 criminal jurisdiction until authorized pursuant to the rules.

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.