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**Date:** August 24, 2012

**To:** Honorable Herb Snyder  
Honorable Jim Morgan  
Co-Chairs, Joint Committee on Government Organization

**From:** John Sylvia, Director  
Performance Evaluation and Research Division

**Subject:** Regulation of Bail Bonding Industry

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This letter-report is in response to your written request, dated February 14, 2012, that the Office of the Legislative Auditor study the issue of regulating the bail bonding industry. Your request specifically states that the study *“be conducted concerning promulgating rules governing statewide licenses to engage in the business of issuing surety bonds in criminal cases or to govern the authority of persons to engage in the bail bonding business in West Virginia.”* The committee chairs noted that attempts have been made to assign an agency to regulate the bail bonding business but to no avail. The most recent attempt involved passage of House Bill 4148 in March 2004 that directed the State Supreme Court of Appeals to promulgate rules governing the authority of persons to engage in the bail bonding business in the state. Although the Supreme Court of Appeals developed rules, it determined that it could not promulgate them or regulate the bail bonding industry because House Bill 4148 imposed an unconstitutional non-judicial function on the Supreme Court.

To study this issue, the Legislative Auditor initiated a review of the statutes of all 50 states and the District of Columbia to determine the manner in which other jurisdictions regulate bail bond agents. **We found that the majority of states (25 of the 39) that have explicit statutory language regulate this industry through their respective department of insurance.** Some states use other state agencies, including the Secretary of State; three states use their supreme court, and six states, including West Virginia, rely on the local courts to regulate bail bondsmen.

The Legislative Auditor also surveyed 12 West Virginia county courts to assess the level of regulation on bail bondsmen in their respective jurisdictions. The results of the survey show a lack of uniformity in regulations, with some county courts imposing fewer regulations on bail bondsmen than other county courts. The disadvantages of light or inadequate regulations are a higher risk of corruption, and unscrupulous treatment by bail bond agents on those seeking bail.

Given that bail bonds are a form of surety insurance, and that the Insurance Commissioner of West Virginia has jurisdiction over other forms of surety insurance (*WVC* §33-1-10), the Insurance Commissioner is a logical authority over the bail bonding industry. The Insurance Commissioner has authority (§33-2-10) to promulgate rules governing the operations, financial conditions, examinations, and other matters related to transacting the business of insurance with the intent to protect and safeguard the interests of policyholders and citizens of the state. Currently, *West Virginia Code* (§33-1-10 (f)(2)) excludes from the definition of surety insurance the executing of bonds by professional bondsmen in criminal cases. **Therefore, the Legislative Auditor recommends that the Joint Committee on Government Organization consider legislation that would amend Chapter 33, Article 1 of the *West Virginia Code* to require the Insurance Commissioner of West Virginia to promulgate rules governing the bail bonding business, and assume the responsibility for licensing bail bond agents.** A detailed analysis of the Legislative Auditor's research is included.

**Research Report**  
**Regulation of the Bail Bonding Industry**

**Office of the Legislative Auditor**  
**August 24, 2012**

**Bail Bonding Regulations in West Virginia Vary From County to County**

The bail bonding business in West Virginia is currently regulated at the local level through the court of record in each county. In 2004, House Bill 4148 was passed amending *WVC* §51-10-8 and requires the West Virginia Supreme Court to promulgate rules to govern the authority of persons engaging in the bail bonding industry. The Supreme Court created a rules committee to draft rules governing the bail bonding industry, but ultimately declined to issue the rules and assume authority regulating the bail bonding industry. Because the Supreme Court of West Virginia declined to issue rules and provide oversight of bail bondsmen, the industry continues to be regulated locally through the circuit court of each county.<sup>1</sup>

Prior to 2004 and the passage of House Bill 4148, *WVC* §51-10-8 required county courts of record in counties with a population of more than 200,000 persons to issue rules determining the qualifications of persons seeking authority to engage in the bail bonding business. Courts were also required to “*take into consideration both the financial responsibilities and the moral qualities of the person so applying. . .*” and require the bail bonding authority to be renewed from time to time. Counties with a population under 200,000 were permitted but not required to provide rules.<sup>2</sup> Some counties have written rules and others have not.

As part of this study, the Legislative Auditor contacted 12 county court clerk’s offices to determine how bail bondsmen are regulated. These counties are:

- Berkeley,
- Braxton,
- Cabell,
- Doddridge,
- Hampshire,
- Kanawha,
- Logan,

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<sup>1</sup> House Bill 42 passed in 1959 created statutory requirements for professional bail bondsmen and established county court clerks as the regulatory body for the profession.

<sup>2</sup> According to US Census Bureau, in 2010 no county in West Virginia had a population exceeding 200,000.

- Marshall,
- Putnam,
- Raleigh,
- Randolph, and
- Wood.

The Legislative Auditor asked staff we spoke with at each of the 12 county court clerk's offices the following questions:

- How many bail bonding businesses are approved to operate in your county?
- Does the county have a list of the approved bonding businesses?
- Has the county written rules governing the practices of bail bonding?
- How often does an approved bail bonding business have to renew its bail bonding approval?
- Are bonding businesses required to demonstrate financial ability?
- How often are bonding businesses required to update the court on the amount of bonds outstanding?

In the counties the Legislative Auditor contacted, we found a total of 55 distinct bail bonding businesses. Staff at six of the counties we contacted indicated the county did not have a list of the court-approved bail bondsmen. After further inquiry, staff in these six counties were able to determine the number of court approved bail bondsmen.

Information from the West Virginia Supreme Court of Appeals states that 20 of the 55 counties in West Virginia have not established rules governing the practice of bail bondsmen. From our review, the Legislative Auditor determined that bail bonding regulations vary greatly from county to county within West Virginia. More specifically we found:

- Staff at six of the 12 counties indicated they do not have written rules concerning the regulation of the bail bonding industry.
- Four counties indicated they require periodic renewal of bail bonding authority.
  - Two of these counties require renewal every three years.
  - Two counties require yearly renewal.
- Five counties stated they require bondsmen to publish a report detailing the status of outstanding bonds.
  - One county requires these reports monthly.
  - One county requires the reports yearly.
  - One county requires the reports quarterly.
  - One county requires the reports every two months.
  - One county requires the reports whenever a new bond is set.
- Seven counties stated they require a demonstrated financial ability.

- Five counties required a demonstrated financial ability established by rule or administrative ruling.
- In two counties, financial ability is at the discretion of the sitting judge.

Wood County provided a comprehensive list of regulations for the bail bonding business. It requires a filing fee of \$155 and bondsmen to renew their approval every two years. Bondsmen are required to list outstanding bonds every two months. A maximum bonding fee is set at 10 percent. Wood County also established a maximum bonding authority for bail bondsmen based upon their financial assets. Additionally, no bondsman may post a bail worth more than double their assets and no single bond may exceed half of a bondsman's bonding authority.

Kanawha County does not have any commercial bail bondsmen operating within its court system. However, commercial bail bonding is allowed in Kanawha County. According to persons we spoke with at the Circuit Court Clerk's office, Kanawha County has not had a single person apply to be a bail bondsman in 15 years. The president of the West Virginia Surety Bail Bonds Association has stated that he believed commercial bail bonding was illegal in Kanawha County. This belief may reflect the perception others have in the bail bondsmen industry, given the lack of bail bondsmen activity in Kanawha County.

However, in reality, the primary reason for the lack of bail bondsmen activity in Kanawha County may be its unique regulatory requirements for bail bondsmen. The Legislative Auditor found that all bail bonding businesses in Kanawha County are required to "associate equally under Chapter 47, Article 8A, Section 1, et. Seq. of the Code of West Virginia as partners in a company known as The Kanawha County Circuit Court Monitored and Regulated Bonding Business Partnership (KMRBP). . . ." The code section cited by the administrative order was repealed in 1995 - two years before the order was signed. It is unclear what section of *West Virginia Code* the order meant to cite.<sup>3</sup>

In order for a bail bondsman to participate, the members of the KMRBP must equally share the six percent bonding fee. The KMRBP is required to employ at least one salaried agent to conduct the business of the group. The partners of the KMRBP are prohibited from conducting bail bonding business themselves and only the KMRBP agent(s) are allowed within the Kanawha County Judicial Building. The requirement to participate in a partnership is likely discouraging commercial bail bondsmen from operating in Kanawha County.

Since commercial bail bondsmen are not operating in Kanawha County, defendants must rely on a friend or family member to post bail for them, and the defendant has to use his or her own financial resources or the finances of friends or family to pay for bail. The amount of bail

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<sup>3</sup> The Uniform Partnership Act established under *WVC* §47B-1-1 is one possible piece of code that the Kanawha County order meant to cite. The other possibility is The Uniform Limited Partnership Act through *WVC* §47-9-1. *WVC* §47-9-6 prohibits the partners in a limited partnership from providing insurance.

required to be paid is determined by each individual judge or magistrate for each case. In some cases, a judge may only require 10 percent of bail to be posted and in other cases the judge may require 100 percent. Whatever the amount of bail to be paid, Kanawha County only accepts real property or cash. For many defendants, paying the full amount of bail is not financially possible. There may be other counties besides Kanawha that do not have bail bondsmen operating in their respective court system. In these cases, defendants will have to post and pay bail similarly to the way it is done in Kanawha County.

It is the Legislative Auditor's opinion that the lack of adequate and uniform regulations of the bail bonding industry, and the risk of harm to the public illustrate the need for sufficient and uniform regulations by the State. For the full results from the county survey, see Appendix B.

### The Department of Insurance Regulates Bail Bondsmen in Most States

Chart 1 shows the results of the Legislative Auditor's review of state statutes as they concern regulations of commercial bail bonding. The Legislative Auditor found that 38 states and the District of Columbia have statutory language establishing a regulatory agency for commercial bail bonding. Commercial bail bonding is illegal in four states (Kentucky, Illinois, Oregon, and Wisconsin), and we were unable to find statutory language establishing a regulatory body in eight states.

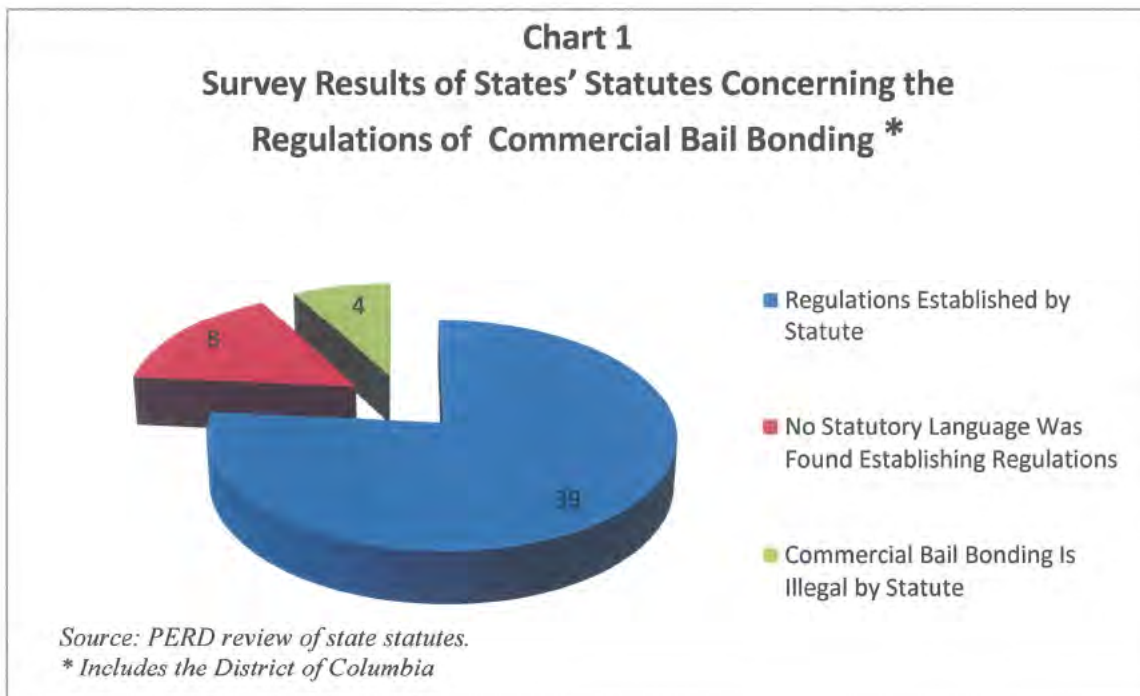


Table 1 below shows that 25 of the 39 jurisdictions that have established regulations statutorily use their respective department of insurance as the regulatory authority over commercial bail bondsmen. Three of West Virginia's bordering states (Ohio, Maryland, and Pennsylvania) regulate commercial bail bondsmen through their departments of insurance.

The states of Massachusetts, Rhode Island, and the District of Columbia regulate bail bondsmen through their Supreme Courts. The states of Arkansas and Washington utilize a licensing board. New Hampshire regulates commercial bail bonding through the Secretary of State, Connecticut regulates bail bondsmen through its Commissioner of Public Safety, and Virginia regulates the industry through its State Corporation Commission. Six states regulate bail bondsmen at the local level. Three of these states, including West Virginia, use the county court system. Minnesota and Tennessee use the county court system in combination with the Department of Commerce and the Department of Insurance respectively. The state of Texas regulates the industry through the use of local county bail bond boards.

<b>Table 1</b>	
<b>Regulatory Bodies for Bail Bondsmen</b>	
<b>Bail Bondsmen Regulated By:</b>	<b>Number of States</b>
Department of Insurance	25
Regulated by Local Courts	6*
Supreme Court	3
State Licensing Board	2
Secretary of State	1
State Corporation Commission	1
The Commissioner of Public Safety	1
<b>Total</b>	<b>39</b>
<i>Source: PERD survey of state statutes.</i>	
<i>*Two states utilize a hybrid system where local courts work in conjunction with state offices to regulate commercial bail bonding.</i>	

## Education Requirements Vary Widely From State to State

PERD found that 21 states have initial educational requirements to become licensed as a bail bondsman ranging from 5 to 30 hours of either college credits in criminal justice or other professional education in related fields. In addition to educational requirements, 17 states also require the passage of an examination in order to become a licensed bail bondsman. West Virginia currently does not have educational requirements beyond a high school diploma but the rules proposed by the Supreme Court Bail Bondsmen Rules Committee would require the

passage of an examination. Additionally, 19 states require continuing education to maintain licensure ranging from 3 to 8 hours yearly. The West Virginia Supreme Court of Appeals' proposed rules do not require continuing education.

### **Licensure Fees Vary and Renewal Fees Are Generally \$100 Or Less**

Licensure fees also vary from state to state. The lowest initial licensure fee is \$25 in North Dakota and the highest is \$2,500 in Arkansas. Twenty-one states specify statutorily their licensure fee. The licensure renewal fee is \$100 per year or less in 15 of these 21 states and exceeds \$250 per year in three states. Although Utah does not specify a licensing fee in its statute, it does indicate the license should be renewed yearly.

### **Thirteen States Require Bonding Collateral**

Thirteen states require persons wishing to become a bail bondsman to provide collateral to insure that they can repay the court system for any bonds that are forfeited. Three states require collateral of \$10,000 and three states require \$25,000. New Hampshire and Utah require the highest bonding collateral amount at \$300,000 while the lowest collateral amount is \$1,000 in California.

### **The Maximum Bonding Fee Is Generally Not Specified in State Code**

Bail bondsmen profit by charging bonding fees which are a percentage of the amount bonded. For example, a bondsman charging a 10 percent fee on a \$50,000 bail would be paid \$5,000. If bail is forfeited, the bondsman must pay the court the full \$50,000. While literature suggests a 10 percent bonding fee is the industry standard this is not always the case. Only 10 states have specified maximum bonding fees in state code. Five states set the maximum bail bonding fee at 10 percent while Utah allows for up to 20 percent. New York has the lowest maximum bail bonding fee at six percent.

### **Lawsuits Involving Bail Bondsmen Appear to be Uncommon in West Virginia**

In order to determine the risk of corruption or unscrupulous behavior involving commercial bail bondsmen, the Legislative Auditor requested that Legislative Services conduct legal research concerning bail bondsmen. Specifically, we wanted to know if there have been any lawsuits filed within the past five years concerning bail bondsmen or bail bond enforcers and the results of those cases. Legislative Services searched West Virginia state case law and West Virginia federal case law on LexisNexis and was not able to find many cases in which a bail



bondsman was a direct party to a lawsuit or where a bail bondsman’s conduct was at issue. As a result, the case law search was extended back to the early 1980s.

**Legislative Services ultimately found eight West Virginia cases involving a bail bondsman as a party to a lawsuit within the past 31 years.** Six of those cases were ruled in favor of the defendant, one was ruled in favor of the plaintiff, and one has yet to be resolved. **Legislative Services also included two cases that did not occur in West Virginia.** The first case occurred in South Carolina and the second case was filed in Ohio but the circumstances surrounding the case occurred within West Virginia and involved West Virginia statute.

One note-worthy West Virginia case is *Weaver v. Dostert* in which the court ruled in favor of the plaintiff, a bail bondsman whose authority to write bonds was suspended. The Supreme Court of Appeals ruled that although bonding authority was granted by the local courts and was not a state license, a bondman’s authority had to be treated as a license with regard to procedural requirements. The Court then held that due process required written notice and a hearing before a bail bondsman’s bonding authority could be revoked. Table 2 contains a list of lawsuits involving bail bondsmen as well as the results of those lawsuits.

**Table 2  
Summary of Lawsuits Involving Bail Bondsmen**

<b>Case</b>	<b>Year</b>	<b>Summary of Case Details</b>	<b>Court Ruling</b>
<i>State v. Belcher</i>	1981	Belcher, a bail bondsman, sued to have a forfeited bond returned.	The Supreme Court of Appeals ruled in favor of the circuit court.
<i>Weaver v. Dostert</i>	1983	Judge Dostert suspended Weaver’s bonding authority. Weaver sought a writ of prohibition to bar the judge from suspending his bonding authority until a hearing was provided.	The Supreme Court of Appeals ruled in favor of Weaver and held that a written notice and a hearing must be provided before bonding authority can be revoked.
<i>Crain v. Lightner</i>	1987	Crain, a bail bondsman, brought a libel suit against law enforcement officials alleging that they solicited jail inmates to corroborate claims against him.	The Supreme Court of Appeals ruled in favor of the law enforcement officials.
<i>Cramblit v. Fikse*</i>	1992	Cramblit, a fugitive, filed action against Fiske and his wife. Fiske and his wife induced Cramblit to enter into WV where he was apprehended by a bail bonds enforcer. Cramblit alleged unreasonable seizure, excessive force, and that his arrest violated California law.	The United States Court of Appeals for the Sixth Circuit ruled that the laws of WV, not California, governed the case. The court found in

**Table 2**  
**Summary of Lawsuits Involving Bail Bondsmen**

<b>Case</b>	<b>Year</b>	<b>Summary of Case Details</b>	<b>Court Ruling</b>
			favor of the defendant Fiske.
<i>State v. Hedrick</i>	1999	A defendant that Hedrick has posted bail for failed to appear at a hearing. The trial court declared the bonds forfeited, the defendant later voluntarily turned himself in. Hedrick was suing for forfeited bail bonds to be returned.	The Supreme Court of Appeals ruled that Hedrick's efforts alone were insufficient to justify remission of forfeited bonds.
<i>Anderson v. Moats</i>	2004	Anderson, an inmate, alleged bondsmen demanded an additional bonding fee as compensation.	Complaint dismissed.
<i>Jack v. West Virginia</i>	2010	Plaintiff, an inmate, alleged he was beaten by two bail bondsmen while police watched.	Complaint dismissed.
<i>Gregg v. Hamm**</i>	2012	The plaintiff (Gregg) filed suit against Hamm, a bondsman, for entering her home and pointing a gun at her while searching for a criminal suspect who had jumped bond.	The United States Court of Appeals for the Fourth Circuit awarded Gregg \$100,000 in damages for a warrantless and involuntary search of her home.
<i>Hart v. W. Va. Regional Jail Authority</i>	2012	Hart, an inmate, alleged he was injured while incarcerated and named a bail bondsman as a party.	Complaint dismissed.
In the Matter of: Carol Fouty, Magistrate for Kanawha County	2012	Fouty allegedly utilized a third party to post bonds for defendants. In return, the defendants agreed to work for the bondsperson and Fouty.	Fouty was relieved of her position. Criminal charges are being considered.

\*This case was filed in Ohio, but the detail of the case occurred in West Virginia and West Virginia statutes were utilized by the court to make its decision.

\*\*This case was filed in South Carolina but appealed to the U.S. Fourth Circuit Court of Appeals which is the federal Circuit Court of Appeals governing West Virginia.

Source: Legislative Services research utilizing LexisNexis.

Although the accusations made in the above cases against bail bondsmen were not substantiated, the potential of inappropriate behavior by bail bondsmen exists and warrants sufficient and uniform regulation.

## **Rules Proposed by the West Virginia Supreme Court of Appeals Provide a Good Template for Regulations**

After the passage of HB 4148, the West Virginia Supreme Court created a rules committee to promulgate rules governing bail bondsmen. The committee created proposed rules, but the rules were not promulgated. These rules have many common elements with regulations established in other states. The rules require passage of an examination to become a licensed bail bondsman, but include a grandfather clause to exempt persons with at least five years of experience. The rules also require an update on outstanding bonds to be filed every six months, and companies to provide a minimum of \$200,000 of collateral for each bonding agent they employ. Additionally, a license would not be renewed if a bondsman did not pay any bond forfeitures that were owed.

The proposed rules would require bondsmen to renew their licenses every two years with a renewal fee of \$300. The Supreme Court did not conduct any fiscal impact studies to determine if bail bondsmen licensure could be financially self-sufficient. From conversations the West Virginia Supreme Court of Appeals had with persons working in the bail bonding industry, it was determined there were less than 100 bonding agencies within West Virginia employing approximately 300 bonding agents. Supreme Court staff estimated that two staff positions could adequately handle the workload associated with licensure. **The Legislative Auditor recommends that the agency assigned as the regulatory body for commercial bail bondsmen should consider utilizing the rules drafted by the Supreme Court as a guideline to govern the bail bonding industry.**

## **Bail Bond Enforcers Are Required to Be Registered With the West Virginia State Police**

When a person who has been released on bond posted by a bail bondsman fails to appear in court at a later date the bondsman must pay the court the full amount of bail and the bond is considered forfeited. Because forfeited bonds can be a large amount of money, bondsmen often hire bail bond enforcers to find defendants and bring them to court to avoid paying forfeiture. Bail bond enforcers are more commonly known as bounty hunters.

*West Virginia Code* §51-10A-2 requires persons acting as bail bond enforcers to be registered with the West Virginia State Police. As part of the registration process, bail bond enforcers are required to submit finger prints, photographs of themselves, written authorization from a bail bondsman to act on their behalf, and a \$50 registration fee. For bail bond enforcers who reside in West Virginia the registration must be renewed every two years. For bail bond enforcers not residing in West Virginia the registration must be renewed every six months. Additionally, when bail bond enforcers from another state enter West Virginia, they must be registered with the State Police. Bail bond enforcers from other states must include the exact

dates they will be in West Virginia and the time and place they will apprehend the defendant. The State Police currently has 46 registered bail bonds enforcers. **Because bail bond enforcers are sometimes armed when apprehending defendants, the Legislative Auditor recommends that responsibility for bail bonds enforcers registration should remain with the West Virginia State Police.**

## Conclusion

State-wide regulations for bail bondsmen could serve to better protect the public by certifying all persons in the bail bonding professions meet a defined set of standards for education, conduct, and financial resources. Based upon regulations within other states, the Legislative Auditor concludes that the Insurance Commissioner of West Virginia would be a logical and appropriate agency to regulate the commercial bail bonding industry. The Legislative Auditor contacted the Insurance Commissioner to give him an opportunity to respond to this recommendation. The Insurance Commissioner's response is attached in Appendix C. Although the Insurance Commissioner does not deny the logic of placing the regulation of commercial bail bondsmen under his authority, he contends that the issue has several areas that need to be carefully studied.

One major concern voiced by the Insurance Commissioner is if there are enough bail bondsmen within West Virginia to cover the costs of regulation. The Insurance Commissioner contends that whoever is given the authority to regulate commercial bail bondsmen will need additional staff, computer software, and hearing examiners. The relatively small number of bail bondsmen may either require a high license renewal fee to be financially self-sufficient or general fund appropriations will be needed to cover the revenue shortfall from charging a lower, reasonable fee. The Legislature will have to take this into consideration. The level of regulations will also be a factor in the costs of regulations. Having a license renewal period of two or more years, with no examination or continuing education would be less costly than requiring an examination, continuing education and an annual license renewal. The rules previously written by the West Virginia Supreme Court of Appeals have many common elements with regulations established in other states and would provide the Insurance Commissioner with a good template for promulgating rules.

## Recommendations

1. *The Legislative Auditor recommends that the Legislature consider modifying West Virginia Code §33-1-10(f) and §51-10-1 et seq. to assign the Insurance Commissioner of West Virginia as the regulatory agency for commercial bail bondsmen.*

2. *The Legislative Auditor recommends that the Insurance Commissioner utilize the rules previously written by the West Virginia Supreme Court of Appeals as a guideline for promulgating rules to govern the commercial bail bonding industry.*
3. *The Legislative Auditor recommends that bail bond enforcers registration remains with the West Virginia State Police.*

**Appendix A**  
**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
Alabama	Department of Insurance	Not Specified	\$25,000	Yes	No	No
Alaska	Department of Insurance	Not Specified	No	No	No	No
Arizona	Department of Insurance	Not Specified	No	No	20 Hours Every 2 Years	No
Arkansas	Bail Bondsmen Licensing Board	\$2,500 new, \$100 per person renewal annually	\$100,000	No	No	10% of bond, at least \$35
California	Department of Insurance	\$118 annually	\$1,000	Yes	12 Hours, 6 Hours Yearly for Renewal	No
Colorado	Department of Insurance	Not Specified	No	No	24 Hours Every 2 Years	Greater of 15% or \$50
Connecticut	The Commissioner of Public Safety	\$100 yearly	No	No	20 Hours in Criminal Justice	No
Delaware	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A

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State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
District of Columbia	United States District Court for the District of Columbia and the Superior Court of the District of Columbia	Not Specified	No	No	No	No
Florida	Regulated Locally by Courts	Not Specified	No	No	12 Hours, Every 2 Years	No
Georgia	Regulated Locally by Courts	Not Specified	No	No	No	Up to 12% for bonds up to \$10,000 and up to 15% for bonds over \$10,000
Hawaii	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A
Idaho	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A
Illinois	Not recognized	N/A	N/A	N/A	N/A	N/A
Indiana	Department of Insurance	\$650, plus \$100 exam fee	No	Yes	No	No

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**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
Iowa	Department of Insurance	\$100 every two years	\$10,000	No	No	No
Kansas	Department of Insurance	Not Specified	No	No	No	No
Kentucky	Not recognized	N/A	N/A	N/A	N/A	N/A
Louisiana	Department of Insurance	Not Specified	No	No	8 hours, 12 hours continuing education	Greater of 12% or \$60
Maine	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A
Maryland	Department of Insurance	Not Specified	Not Specified for individuals, \$10,000 for a firm	Yes	16 hours continuing education	No
Massachusetts	State Superior Courts	Not Specified	No	No	No	No
Michigan	Department of Insurance	Not Specified	No	Yes	30 hours every 2 years	10%
Minnesota	Approval of court, and Department of Commerce	Not Specified	No	No	Not Specified	No



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**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
Mississippi	Department of Insurance	\$100, yearly renewal	\$30,000	No	8 hours, 8 hours continuing education yearly	Greater of \$50 or 10%, up to 15% for capital offenses or residing out of state
Missouri	Department of Insurance	Biennial, not to exceed \$150	\$10,000	Yes	24 hours, 8 hours biennial	No
Montana	Department of Insurance	\$100 initial, \$50 Biennial renewal	No	Yes	5 Hours Biennial	No
Nebraska	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A
Nevada	Department of Insurance	\$78 initial, \$78 triennial renewal	\$25,000	Yes	6 hours	Greater of \$50 or 15%
New Hampshire	Secretary of State	\$400 initial, \$100 yearly renewal	\$300,000	No	No	No
New Jersey	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A
New Mexico	Department of Insurance	\$30 initial, \$20 yearly renewal	\$25,000	Yes	30 hours	No

**Appendix A**  
**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
New York	Department of Insurance	\$25 per year, biennial renewal	No	Yes	No	Up to 10% for bonds up to \$3,000, up to 8% of any amount between \$3,000 and \$10,000, and up to 6% for any amount over \$10,000
North Carolina	Department of Insurance	\$200 initial, \$100 yearly renewal	No	Yes	12 hours, 3 hours continuing education yearly	Up to 15%
North Dakota	Department of Insurance	\$25 yearly	No	Yes	24 Hours Every 2 Years	Greater of up to \$75 or up to 10%
Ohio	Department of Insurance	\$150 yearly	No	Yes	20 Hours, 7 Hours Yearly	No
Oklahoma	Department of Insurance	\$250 initial, \$100 yearly renewal	No	Yes	16 Hours, 8 Hours Continuing Education Yearly	No
Oregon	Not Recognized	N/A	N/A	N/A	N/A	N/A
Pennsylvania	Department of Insurance	\$100 yearly	No	No	No	Up to 10% for the first \$100 and up to 5% for each additional \$100

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**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
Rhode Island	Supreme Court	Not Specified	No	No	No	No
South Carolina	Department of Insurance	\$400 initial, \$150 yearly renewal	No	Yes	20 Hours, 6 Hours Yearly	At least \$25 and not more than 15% of the bond amount
South Dakota	Department of Insurance	\$30 yearly	No	Yes	No	No
Tennessee	Overseen by District Courts, Unless Bonding Amounts Over \$10,000 then Department of Insurance	N/A	No	No	8 Hours Yearly	Up to 10%
Texas	County Bail Bond Boards	\$500 biennial renewal	\$50,000 or \$10,000 depending on county size	No	No	No
Utah	Department of Insurance	Not Specified, Yearly Renewal	\$300,000	No	No	Up to 20% of bond amount
Vermont	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A

**Appendix A**  
**Bail Bonding 50 State Survey Results**

State	Regulated By	Licensing Fee (If Specified in Code)	Bond Collateral or Surety	Exam	Required Education	Bond Fee Max (If Specified in Code)
Virginia	State Corporation Commission	\$900 biennial renewal	\$200,000 if property bail bondsmen, none if surety	Yes	24 hours, 16 hours every 2 years	No
Washington	Department of Licensing	Not Specified	No	Exam or 12 Hours	Exam or 12 Hours	No
West Virginia	Regulated Locally by Court System	N/A	N/A	N/A	N/A	N/A
Wisconsin	Not recognized	N/A	N/A	N/A	N/A	N/A
Wyoming	No Statutorily Language Regarding Regulation	N/A	N/A	N/A	N/A	N/A

*Source: PERD Analysis of State Codes.*

**Appendix B**  
**West Virginia County Court Clerk Survey**

<b>County</b>	<b>Renewal Period</b>	<b>Required to Demonstrate Financial Ability</b>	<b>Periodic Monthly Updates Of Outstanding Bonds Required</b>
Berkeley	3 years	No	Monthly
Braxton	-	No	No
Cabell	-	No	No
Doddridge	3 years	Yes	Yearly
Hampshire	Yearly	Yes	Quarterly
Kanawha	-	Yes	No
Logan	-	Yes	For each bond
Marshall	-	No	No
Putnam	-	No	No
Raleigh	-	Established by Judge	No
Randolph	-	Established by Judge	No
Wood	Yearly	Yes	Every 2 months

*Source: PERD Correspondence With Staff at County Court Clerk Offices.*

Appendix C  
Transmittal Letter

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



July 31, 2012

John Sylvia  
Director



Michael D. Riley, Commissioner  
Insurance Commissioner of West Virginia  
1124 Smith Street, Room 413  
Charleston, WV 25301

Dear Commissioner Riley:

The Joint Committee on Government Organization requested that our office conduct a study concerning the regulation of the commercial bail bonding profession. After reviewing how other states regulated the bail bonding industry, we are considering recommending that the Insurance Commissioner be statutorily assigned as the regulatory agency for commercial bail bonding in West Virginia. This responsibility would include promulgating rules governing statewide licensing to engage in issuing surety bonds in criminal cases. We would like to provide you with an opportunity to respond to this recommendation.

Please respond in writing by Monday, August 6. If you have any questions, please contact me or Michael A. Castle, Research Analyst, at (304)347-4890.

Sincerely,

A handwritten signature in cursive that reads "John Sylvia".

John Sylvia

————— *Joint Committee on Government and Finance* —————

**Appendix D**  
**Response from Insurance Commissioner of West Virginia**





STATE OF WEST VIRGINIA

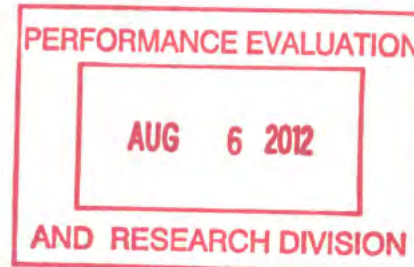
## Offices of the Insurance Commissioner

Earl Ray Tomblin  
Governor

Michael D. Riley  
Insurance Commissioner

August 6, 2012

John Sylvia  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610



Re: Commercial Bail Bonding Profession

Dear Mr. Sylvia:

The West Virginia Office of the Insurance Commissioner (WVOIC) is in receipt of your letter dated July 31, 2012, and is submitting the following in response to your division's recommendation.

Professional bail bondsmen are exempted from insurance and cannot currently be regulated as insurance. There are insurance companies that issue bail bond policies. These companies must maintain state solvency and reporting standards. Professional bail bondsmen do not and most likely cannot meet these requirements. This initiative would require a complete new article or chapter and legislative rules to introduce comprehensive regulation of this industry. The WVOIC would be starting from no regulation in many areas to minimal in others. Commercial bail bonding is a unique industry much different from insurance regulation and would require the creation of a separate division in order to properly administer. If professional bail bonding is regulated as insurance, WV would only allow insurance companies to write coverage or bonds.

The WVOIC's staff is set up to work with professional insurance agents and business men and women. When licensing issues or administrative actions occur, these individuals and companies tend to contact a lawyer. The staff is not trained or equipped to deal with bail enforcement agents or bail bondsmen who deal with the criminal court systems and those who fall under their purview.

States that have bail bonding regulation require comprehensive education, testing, and continuing education (CE) requirements for both bail bondsmen and bail enforcement agents. Their statutes contain standards of conduct, consumer protection procedures and notifications to law enforcement officials. Where synergies at the WVOIC are possible, they would need to be explored; however, they will have a cost. The regulation of the criminal bail bonding industry will require additional work and input from our primary regulatory divisions. These divisions include Rates and Forms, Producer Licensing, Financial Conditions, Consumer Services, Compliance Division, and the Fraud Division. This will require reevaluation of jobs and

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additional training to provide oversight in the fifty-five counties and will require additional personnel and equipment.

Regulation requires addressing consumer issues such as cancellation of bonds for no cause and keeping the fees, reasonableness of bond fees, as well as disputes over service and treatment. Additional staff and training of our Consumer Service Division will be required. Solvency of bail bondsmen will be another concern. Rules and regulations will need developed on how the costs of reviewing and auditing solvency requirements will be met or undertaken.

The WVOIC's IT systems are not designed to facilitate the regulation of criminal bail bondsmen or bail enforcement agents. In addition to the hardware and software additions, there is the need for additional personnel along the entire regulatory spectrum, from licensing personnel to administrative hearing examiners. There is a significant probability for substantial cost to be borne by the WVOIC. From earlier discussions on this issue with the Bail Bondsmen Association and the Supreme Court, there does not appear to be a sufficient number of individuals in this industry to cover the costs without large licensing and other fees.

The cost of providing this regulation will be difficult to recover if licensing and other fees are to be reasonable for the bail bondsmen industry. Some of the needed services will include: costs of processing an application for licensure, enforcement of the regulations, and other costs associated with the maintenance of the program of regulation, training, processing school certifications and enforcement of training standards, conducting investigations to determine the suitability of applicants for licensure, and conduct investigations to determine if any disciplinary actions against a licensed bondsman are warranted. If adequate funding is not provided to cover these administrative costs, then insurers and insurance policyholders (all consumers) will be required to subsidize the regulatory oversight costs of this industry.

This will be a rather significant change in the regulation of bondsmen in WV and will require either amendment or repeal of overlapping and potentially conflicting statutes:

W.Va. Code § 33-1-10(f)

W.Va. Code § 51-10-1 et seq.

W. Va. Code § 51-10A-1 et seq.

The State Police currently are responsible for the oversight of bail enforcement agents. It would appear to be dysfunctional to have one agency regulate the bail bondsmen and another agency regulate their employees or contracted agents. Both licensees should be under the same regulatory scheme.

The carrying of firearms is not uncommon with bail bondsmen and enforcement agents, nor is physical confrontations when enforcement agents confront those who have failed to meet the requirements of their bonds. If WV is going to have a licensing agency, there will need to be standards set or prohibitions on conduct. No agency wants the responsibility of licensing these individuals without these issues being addressed. In regard to firearms there should be qualification programs instituted and annual recertification.

There needs to be a determination as to what level of regulation is desired, which or how many agencies will be involved, and what statutes need amended or repealed, and what is to take their place. There needs to be a determination if the circuit courts want to continue to have say in bonding authority, what regulation the State Police wants to retain, and how this will be coordinated under a new regulatory scheme. Lastly, the WVOIC has no existing body of knowledgeable individuals to provide expertise in developing a bail bonds regulatory program.

If all that is contemplated is a piecemeal introduction of a license without comprehensive regulation, the public is disserved. The public is aware there is little regulation now and can be wary. Our citizens perceive regulation as complete and encompassing, if only providing minimal licensing regulation, the State of West Virginia will end up with an ineffective program and illusionary consumer protections.

It is my recommendation that this issue be put on hold until the appropriate agency can be identified and a comprehensive regulatory scheme is determined. There currently exist too many open questions regarding the level of regulation, how the costs of the program will be absorbed, what regulatory roles various agencies will serve and the necessary infrastructure or mechanism to facilitate an agency taking over bail bondsmen regulation.

Thank you for your consideration of these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Riley". The signature is written in a cursive, somewhat stylized script.

Michael D. Riley  
Insurance Commissioner