

# ACT 16

of

2015

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A Guide for  
Pennsylvania  
Bail Bondsmen

## **PURPOSE OF ACT 16 OF 2015**

The main purpose of Act 16 is to bring accountability, professionalism, and transparency to our industry. The Act will also provide a uniform collection of rules to regulate our profession throughout the Commonwealth. As of October 30, 2015, all Pennsylvania bail bondsmen will be required to be associated with a surety company. Current professional (or property) bondsmen will be required to become surety bondsmen. Professional (or property) bondsmen, however, will not be required to take Pennsylvania Insurance Department (PID) examinations to become surety bail bondsmen. They are "grandfathered" into PID's licensure program as insurance producers.

## **REQUIREMENTS TO BE A BAIL BONDSMEN**

In addition to receiving from PID a license to be an insurance producer and a casualty line of authority, bail bondsmen will need to file with the county clerk of any county in which they operate:

- 1) A copy of their PID license;
- 2) A statement identifying a Pennsylvania office address for the service of legal process; and,
- 3) A qualifying power of attorney issued by an insurer with which the bail bondsman is associated.

## **PID LICENSE SUSPENSION OR NONRENEWAL**

Given that all bail bondsmen will now be surety bail bondsmen, Act 16 creates a detailed mechanism under which PID will be required to suspend or non-renew a bail bondsman's license. This process may begin if a bail bondsman has unpaid forfeitures for over six months. A district attorney or county solicitor may petition a court of common pleas to issue an order to PID to suspend or non-renew a bail bondsman's license. A bail bondsman, however, has certain protections under this process. These protections include a certified mail written notice to the bail bondsman and the insurer 30 days prior to any suspension or nonrenewal order that:

- 1) Details the amounts of forfeitures and penalties owed to the county;
- 2) Explains how, when and where to contest the potential order;
- 3) States the grounds for contesting the notice are limited to mistakes of fact in either the amount of forfeitures owed or the identity of the bail bondsman subject to a bail forfeiture order; and
- 4) Explains the court will issue PID an order to suspend or non-renew the bail bondsman's license 30 days after receipt of the notice unless the bail bondsman pays the forfeitures and penalties owing or is excused from paying due to a mistake of fact.

After 30 days, if a bail bondsman has not paid the owing amount or has not been excused from paying for mistake of fact, a court will issue an order to PID to suspend or non-renew the bail bondsman's license. This action triggers an additional 10 day period in which the bail bondsman or insurer may contest the order and prevent the license suspension or

nonrenewal. Again, the only grounds for appeal of the order are a mistake of fact in the amount owing or the identity of the bail bondsman. PID will suspend or non-renew the bail bondsman's license if no appeal is taken or if an appeal is denied. Upon license suspension or nonrenewal by PID, a bail bondman will be prohibited from conducting business in any county.

### **COUNTY SUSPENSION OR REVOCATION OF AUTHORITY TO CONDUCT BUSINESS**

Act 16 makes minor changes in regard to a county's ability to suspend or revoke a bail bondsman's authority to conduct business. In addition to the district attorney, Act 16 now authorizes the county solicitor to petition the court to suspend or revoke a bail bondsman's authority to conduct business. A court of common pleas may suspend or revoke a bail bondsman's authority to conduct business for "good cause" or for any of the following specific reasons:

- 1) A violations of any provisions of Title 42, Chapter 57, Subchapter B;
- 2) Fraudulently obtaining a license from PID or authority to conduct business from any county;
- 3) Upon conviction for any criminal offense under Pennsylvania or United States law or any other jurisdiction;
- 4) Upon being adjudged bankrupt or insolvent;
- 5) Failing to pay judgement rendered on any forfeited undertaking in any jurisdiction; or
- 6) Any interference or attempted interference with the administration of justice.

### **FORFEITED UNDERTAKING**

Act 16 provides a significantly new process for the forfeiture of bonds. Please pay special attention to a bail bondsman's rights and responsibilities under these new provisions.

If a defendant fails to appear for any scheduled court proceeding, bail may be revoked. A county clerk shall serve a notice of revocation on the defendant, the bail bondsman and the insurer. This notice will be delivered by certified mail to the bail bondsman's address of record. A bail bondsman will have 90 days to either produce the defendant or provide proof that the defendant is in custody in another jurisdiction. Failing this, on the 91<sup>st</sup> day, bail will be revoked and the bail bondsman must make payment of the forfeited undertaking. Act 16 also requires a district attorney or county solicitor to commence license suspension or nonrenewal proceedings against a bail bondsman who fails to make this timely payment.

All is not lost at Day 91, however, assuming a bail bondsman pays the forfeited undertaking. If a bail bondsman recovers the defendant after Day 91, some or all of the forfeited bond may be recovered upon petition to the court on the following prorated basis:

- 1) 91 days to six months = 100% forfeited bond's value minus \$250.00 administrative fee;

- 2) Six months to one year = 80% of the forfeited bond's value; and
- 3) One year to two years = 50% of the forfeited bonds value.

This section of Act 16 also provides that **“no third-party surety shall be responsible for payment on a forfeited undertaking if the revocation of bail is sought for failure of the defendant to comply with the conditions of the defendant’s release other than appearance.”** This significant provision is intended to remedy the judge-made law contained in the Hann Decision.

### **PRIVATE CAUSE OF ACTION**

Act 16 creates a private cause of action for bail bondsmen and insurers to police their own ranks. A bail bondsman or insurer who believes a competitor has violated Title 42, Chapter 57, may commence a cause of action in the county in which the alleged violation occurred. This cause of action can be for monetary damages, declaratory judgement or injunctive relief. The violation must be proven by clear and convincing evidence.

Be cautioned, however, if a bail bondsman or insurer initiates a frivolous action against a competitor, they can be subjected to penalties including the actual costs to defend the frivolous law suit and punitive damages equal to those actual costs. Do not use this provision simply to hurt a competitor. Be sure to have real evidence of a violation.

### **THIRD PARTY SURETIES’ RESPONSIBILITIES**

Although Act 16 contains provisions to overturn the Hann Decision, bail bondsmen will have new statutory reporting duties in regard to defendant conduct.

#### *Reportable Defendant Conduct*

A bail bondsman must report a defendant’s bail condition violation that is any of the following:

- 1) Violation of a stay away order;
- 2) Violation of a protection from abuse order;
- 3) An act of victim or witness intimidation;
- 4) A misdemeanor or felony under Crimes Code provisions related to:
  - a. Criminal homicide;
  - b. Assault;
  - c. Kidnapping;
  - d. Sexual offenses;

- e. Homicide by watercraft while under the influence;
  - f. Inflicting bodily injury while driving under the influence;
  - g. Homicide by vehicle while under the influence;
  - h. Aggravated assault by vehicle while under the influence; and
- 5) A crime eligible for sentencing as a second or subsequent offense.

### ***Reporting Requirement***

Under Act 16, a bail bondsman will have a two part reporting requirement. First, within 24 hours of receiving notice that a defendant has committed any violation listed above, a bail bondsman must make a verbal or written report to the law enforcement agency with jurisdiction over the defendant of the reportable violation.

Second, within 48 hours of the above initial report, a bail bondsman must make a written report to the district attorney responsible for the defendant's prosecution. This "written confirmation" report must include the defendant's name, the bail bondsman's name, the violation's date, the date and time the bail bondsman learned of the violation, the law enforcement agency that received the initial report and the date and time the bail bondsman made the initial law enforcement agency report. This written confirmation report may be delivered by fax, US mail, electronic mail or hand delivery.

### ***Penalty***

**A bail bondsman who fails to make the initial report or the written confirmation report may be subject to civil penalties. A district attorney must demonstrate that the**

**unreported violation resulted in bodily injury or property damage in excess of \$10,000.00, and either of the following apply:**

- 1) The bail bondsman knew of the bail conditions prior to the bodily injury or property damage occurring and the bail bondsman received notice of the bail condition violation with reasonable time to make the required reports; or**
- 2) The bail bondsman's failure to discover and report the violation was due to willful disregard for the victim's, witness's or general public's safety.**

### ***Civil Penalties***

A court of common pleas may impose civil penalties upon a bail bondsman in the range of \$500.00 to \$5,000.00. If the bail bondsman does not pay the civil penalty within 90 days, the district attorney may ask the court to suspend the bail bondsman's authority to operate for 60 days. Notice of this suspension will also be delivered to the bail bondsman's insurer. If the civil penalty remains unpaid after the 60 day suspension, the district attorney may seek a license suspension or nonrenewal from PID. Any collected civil penalties are to be used by the district attorney for victim services.

### ***Further Penalties***

If a bail bondsman has been subjected to civil penalties three or more times in a two year period, a district attorney may seek a license revocation from PID.

#### *Affirmative Defense to Civil Penalties*

A bail bondsman may avoid civil penalties and license suspension or revocation if the bail bondsman can show:

- 1) The required initial law enforcement agency and district attorney written confirmation reports were made and delivered;
- 2) The bail bondsman lacked knowledge of bail conditions after attempting to receive the information or that bail conditions were altered after a defendant's release; or,
- 3) The bail bondsman reviewed the bail conditions with the defendant within 24 hours of release and any subsequent defendant contacts, and the defendant expressed a willingness to commit a violation and the bail bondsman reported that intention to the district attorney or law enforcement agency if the district attorney is unavailable.