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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

House Bill No. 4481

(By Delegates Douglas, Kuhn, Mahan,
Staton, Houston and Wills)



Passed March 11, 2000

In Effect Ninety Days from Passage

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LEGISLATIVE SERVICES
DIVISION

ENROLLED

H. B. 4481

(BY DELEGATES DOUGLAS, KUHN, MAHAN,
STATON, HOUSTON AND WILLS)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a; and to amend article three, chapter fifty-six of said code by adding thereto a new section, designated section thirty-four; all relating to registration of bail bond enforcers with the West Virginia state police; definitions; requiring registration of bail bond enforcers and filing of authorization to act by bail bondsmen; authorizing superintendent of the state police to enforce registration and set fees; creation of the "bail bond enforcers account" in the state treasury; effect of authorization; prohibited conduct; unauthorized acts; criminal and civil penalties; and secretary of state to be agent or attorney in fact to accept service of process on behalf of bail bondsmen and bail bond enforcers.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-a; and that article three, chapter

fifty-six of said code be amended by adding thereto a new section, designated section thirty-four, all to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10A. BAIL BOND ENFORCERS.

§51-10A-1. Definitions.

1 As used in this article:

2 (a) "Bail bondsman" means any person, partnership or
3 corporation engaged for profit in the business of furnishing bail,
4 making bonds or entering into undertakings, as surety, for the
5 appearance of persons charged with a criminal offense or
6 violation of law punishable by fine or imprisonment before any
7 court within or without this state. The term "bail bondsman"
8 includes, but is not limited to, persons conducting a bonding
9 business as defined in section one, article ten of this chapter.

10 (b) "Bail bond enforcer" means a person who on behalf of
11 a bail bondsman enters this state or is present in this state for
12 the purposes of: (1) Assisting a bail bondsman in presenting the
13 defendant in court when required; (2) assisting in the apprehen-
14 sion and surrender of the defendant to a court; (3) keeping a
15 defendant under surveillance; or (4) executing bonds on behalf
16 of a bail bondsman when a power of attorney has been duly
17 recorded. The term "bail bond enforcer" does not include a duly
18 licensed attorney-at-law or a law-enforcement officer assisting
19 a bail bondsman.

**§51-10A-2. Registration of bail bond enforcers and authorization
by bail bondsman required; fees.**

1 (a) No person may act in the capacity of a bail bond
2 enforcer within this state or perform any of the functions,
3 duties, or powers prescribed for bail bond enforcers under

4 section one of this article unless duly registered with the West
5 Virginia state police as provided in this section.

6 (b) The superintendent of the West Virginia state police
7 shall design registration, authorization and notice forms, which,
8 at minimum, shall require:

9 (1) Identifying information as to the registrant and at least
10 one bail bondsman on whose behalf he or she is authorized to
11 act as agent: *Provided*, That a registrant may not act on behalf
12 of any bail bondsman until authorization to act is filed with the
13 superintendent;

14 (2) A complete set of the registrant's fingerprints, certified
15 by an authorized law enforcement officer;

16 (3) A recent credential-sized, full-face photograph of the
17 registrant;

18 (4) Certification, under penalties of perjury, that the
19 registrant is at least twenty-one years of age, is a citizen of the
20 United States, and has never been convicted of a felony in any
21 state of the United States;

22 (5) Authorization in writing, as provided in subsection (b)
23 or (c) of this section, from any bail bondsman on whose behalf
24 the bail bond enforcer is authorized to enter this state or act
25 within this state; and

26 (6) Other information as the superintendent determines is
27 reasonable and necessary.

28 (c) A bail bondsman conducting a bonding business in this
29 state may grant continuing authorization to a bail bond enforcer
30 who is a citizen and resident of this state to act as his or her
31 agent on a continuing basis, for a period of time not to exceed
32 two years, either statewide or within named counties or judicial

33 circuits of the state, with respect to all defendants for whom the
34 bail bondsman acts as surety to secure an appearance. A
35 continuing authorization shall state the expiration date of the
36 authorization on the face of the document.

37 (d) A bail bondsman within or without this state may grant
38 authorization to a bail bond enforcer within or without this state
39 to act as his or her agent with respect to a named defendant or
40 named defendants, for a period of time not to exceed sixty days,
41 in which case notice in advance of any action to the West
42 Virginia state police of the time and place of any proposed
43 action within this state with respect to any defendant, and the
44 date any bail bond enforcer who is not a resident of this state
45 will enter the state, is required. An authorization shall state the
46 expiration date of the authorization on the face of the document.

47 (e) The superintendent may require any reasonable interroga-
48 tories or examinations relating to a registrant's qualifications
49 or other matters which are reasonably necessary to protect the
50 public.

51 (f)(1) The superintendent may establish and collect a
52 reasonable registration fee not to exceed fifty dollars to
53 accompany registration, and a filing fee not to exceed ten
54 dollars to accompany the filing of any authorization, to be used
55 for the purposes of defraying administrative and other expenses
56 incurred due to the enactment of this article. No fee is autho-
57 rized for the filing of notices required under this article.

58 (2) There is hereby created in the state treasury a special
59 account, designated the "bail bond enforcer account". All fees
60 collected pursuant to the provisions of this article shall be
61 deposited in the bail bond enforcer account. Expenditures from
62 the account shall be for the purposes set forth in this subsection
63 and are not authorized from collections but are to be made only
64 in accordance with appropriation by the Legislature and in

65 accordance with the provisions of article three, chapter twelve
66 of this code and upon the fulfillment of the provisions set forth
67 in article two, chapter five-a of this code: *Provided*, That for the
68 fiscal year ending the thirtieth day of June, two thousand,
69 expenditures are authorized from collections rather than
70 pursuant to an appropriation by the Legislature.

71 (g) The superintendent is authorized to file and disseminate
72 an interpretive rule for the purpose of providing information
73 and guidance to prospective registrants, bail bondsmen, and the
74 general public with respect to the enforcement of this article.
75 The superintendent is charged with the enforcement of this
76 article in the civil and criminal courts of the state and may take
77 any lawful action reasonably necessary to effectuate its pur-
78 poses.

§51-10A-3. Effect of authorization.

1 A bail bond enforcer authorized or employed by a bail
2 bondsman to act within this state with respect to any defendant
3 whose custody or appearance the bail bond enforcer secures or
4 attempts to secure, is the agent of the bail bondsman for any act
5 related to the purposes set forth in section one of this article. A
6 bail bond enforcer who acts in that capacity within this state is
7 the agent of the bail bondsman with whom the bail bond
8 enforcer has an agreement or written or verbal contract, whether
9 or not authorization is filed with the West Virginia state police
10 as required in section two of this article.

§51-10A-4. Prohibited conduct.

1 A bail bond enforcer may not:

2 (a) Enter an occupied residential structure without the
3 consent of the occupants who are present at the time of the
4 entry;

5 (b) Conduct a bail recovery arrest or apprehension without
6 written authorization from a bail bondsman;

7 (c) Wear, carry or display any uniform, badge, shield or
8 other insignia or emblem that implies that the bail bond
9 enforcer is an employee, officer or agent of this state, a political
10 subdivision of this state or the federal government. A bail bond
11 enforcer may display identification that indicates his or her
12 status as a bail bond enforcer only; or

13 (d) Conduct a bail bond apprehension or arrest without
14 exercising due care to protect the safety of persons other than
15 the defendant and the property of persons other than the
16 defendant.

§51-10A-5. Unauthorized acts; penalties.

1 (a) A person who willfully violates any provision of section
2 four of this article, or who acts as a bail bond enforcer within
3 this state without filing a registration, authorization or notice
4 required by this article, is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than five hundred or
6 more than ten thousand dollars, or imprisoned in the county jail
7 not more than sixty days, or both fined and imprisoned.

8 (b) A bail bondsman who, without filing the authorization
9 required in this article, employs or contracts with a bail bond
10 enforcer who enters this state or acts on the bondsman's behalf
11 within this state; who authorizes an unregistered bail bond
12 enforcer to act on his or her behalf; or whose agent acts in a
13 manner prohibited in section four of this article, is subject to a
14 civil penalty of ten thousand dollars, enforceable by civil action
15 in the circuit court of Kanawha County or the circuit court of
16 any county in which the unauthorized action as a bail bond
17 enforcer has occurred. The superintendent of the West Virginia
18 state police is authorized to enforce payment of civil penalties
19 through the courts of this state. Civil penalties pursuant to this

20 section are payable one-half to the state police death, disability
 21 and retirement fund and one-half to the crime victims compen-
 22 sation fund.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-34. Actions by or against nonresident bail bond enforcement agents or bail bondsmen; appointment of secretary of state as agents; service of process.

1 (a) Every nonresident bail bond enforcer or bail bondsman,
 2 for the privilege of entering this state to act in the capacity of a
 3 bail bond enforcer, either personally or through an agent,
 4 appoints the secretary of state, or his or her successor in office,
 5 to be his or her agent or attorney-in-fact upon whom may be
 6 served all lawful process in any action or proceeding against
 7 him or her in any court of record in this state for any act
 8 occurring within this state resulting in injury arising out of any
 9 breach of the applicable standard of care with respect to any
 10 person other than a defendant whose custody or appearance the
 11 bail bond enforcer secures or attempts to secure, or with respect
 12 to the property of any person other than a defendant whose
 13 custody or appearance the bail bond enforcer secures or
 14 attempts to secure; or for enforcement of any civil penalty for
 15 breach of a duty imposed by this code with respect to bail
 16 bondsmen employing or contracting with bail bond enforcers:
 17 *Provided*, That in the event process against a nonresident
 18 defendant cannot be effected through the secretary of state, as
 19 provided by this section, for the purpose only of service of
 20 process, the nonresident bail bond enforcer or bondsman shall
 21 be deemed to have appointed as his or her agent or attor-
 22 ney-in-fact any insurance company which has a contract of
 23 liability insurance for his or her activities.

24 (b) For purposes of service of process as provided in this

25 section, every insurance company shall be deemed the agent or
26 attorney-in-fact of every nonresident bail bond enforcer or
27 bondsman insured by the company if the insured nonresident
28 bail bond enforcer or bondsman is involved in any bail bond
29 enforcement activity occurring within this state resulting in
30 injury arising out of any breach of the applicable standard of
31 care with respect to any person other than a defendant whose
32 custody or appearance the bail bond enforcer secures or
33 attempts to secure, or with respect to the property of any person
34 other than a defendant whose custody or appearance the bail
35 bond enforcer secures or attempts to secure and service of
36 process cannot be effected upon the nonresident through the
37 office of the secretary of state. Upon receipt of process as
38 hereinafter provided, the insurance company may, within thirty
39 days, file an answer or other pleading or take any action
40 allowed by law on behalf of the defendant.

41 (c) A nonresident bail bond enforcer or bail bondsman
42 entering this state, either personally or through an agent, is
43 deemed to acknowledge the appointment of the secretary of
44 state, or, as the case may be, his or her liability insurance
45 company, as his or her agent or attorney-in-fact, or the agent or
46 attorney-in-fact of his or her administrator, administratrix,
47 executor or executrix in the event the nonresident dies, and
48 furthermore is deemed to agree that any process against him or
49 her or against his or her administrator, administratrix, executor
50 or executrix, which is served in the manner hereinafter pro-
51 vided, shall be of the same legal force and validity as though
52 said nonresident or his or her administrator, administratrix,
53 executor or executrix were personally served with a summons
54 and complaint within this state.

55 Any action or proceeding may be instituted, continued or
56 maintained on behalf of or against the administrator,
57 administratrix, executor or executrix of any nonresident who
58 dies subsequent to bail bond enforcement activity in this state

59 by the nonresident or his or her duly authorized agent.

60 (d) At the time of filing a complaint against a nonresident
61 bail bond enforcer or bondsman who has been involved in bail
62 bond enforcement activity in the state of West Virginia and
63 before a summons is issued thereon, the plaintiff, or someone
64 for him or her, shall execute a bond in the sum of one hundred
65 dollars before the clerk of the court in which the action is filed,
66 with surety to be approved by said clerk, conditioned that on
67 failure of the plaintiff to prevail in the action he or she will
68 reimburse the defendant, or cause the defendant to be reim-
69 bursed, the necessary expense incurred in the defense of the
70 action in this state. Upon the issue of a summons the clerk will
71 certify thereon that the bond has been given and approved.

72 (e) Service of process upon a nonresident defendant shall be
73 made by leaving the original and two copies of both the
74 summons and complaint, together with the bond certificate of
75 the clerk, and the fee required by section two, article one,
76 chapter fifty-nine of this code with the secretary of state, or in
77 his or her office, and said service shall be sufficient upon the
78 nonresident defendant or, if a natural person, his or her adminis-
79 trator, administratrix, executor or executrix: *Provided*, That
80 notice of service and a copy of the summons and complaint
81 shall be sent by registered or certified mail, return receipt
82 requested, by the secretary of state to the nonresident defendant.
83 The return receipt signed by the defendant or his or her duly
84 authorized agent shall be attached to the original summons and
85 complaint and filed in the office of the clerk of the court from
86 which process is issued. In the event the registered or certified
87 mail sent by the secretary of state is refused or unclaimed by
88 the addressee or if the addressee has moved without any
89 forwarding address, the registered or certified mail returned to
90 the secretary of state, or to his or her office, showing thereon
91 the stamp of the post-office department that delivery has been
92 refused or not claimed or that the addressee has moved without

93 any forwarding address, shall be appended to the original
94 summons and complaint and filed in the clerk's office of the
95 court from which process issued. The court may order such
96 continuances as may be reasonable to afford the defendant
97 opportunity to defend the action.

98 (f) The fee remitted to the secretary of state at the time of
99 service, shall be taxed in the costs of the proceeding and the
100 secretary of state shall pay into the state treasury all funds so
101 coming into his or her hands from the service. The secretary of
102 state shall keep a record in his or her office of all service of
103 process and the day and hour of service thereof.

104 (g) In the event service of process upon a nonresident
105 defendant cannot be effected through the secretary of state as
106 provided by this section, service may be made upon the
107 defendant's insurance company. The plaintiff must file with the
108 clerk of the circuit court an affidavit alleging that the defendant
109 is not a resident of this state; that process directed to the
110 secretary of state was sent by registered or certified mail, return
111 receipt requested; that the registered or certified mail was
112 returned to the office of the secretary of state showing the
113 stamp of the post-office department that delivery was refused
114 or that the notice was unclaimed or that the defendant addressee
115 moved without any forwarding address; and that the secretary
116 of state has complied with the provisions of subsection (e) of
117 this section. Upon receipt of process the insurance company
118 may, within thirty days, file an answer or other pleading and
119 take any action allowed by law in the name of the defendant.

120 (h) The following words and phrases, when used in this
121 article, shall, for the purpose of this article and unless a
122 different intent on the part of the Legislature is apparent from
123 the context, have the following meanings:

124 (1) "Agent" or "duly authorized agent" means and includes,

125 among others, a bail bond enforcer who, on behalf of a bail
126 bondsman, is involved in any bail bond enforcement activity
127 occurring within this state resulting in injury arising out of any
128 breach of the applicable standard of care with respect to any
129 person other than a defendant whose custody or appearance the
130 bail bond enforcer secures or attempts to secure, or with respect
131 to the property of any person other than a defendant whose
132 custody or appearance the bail bond enforcer secures or
133 attempts to secure;

134 (2) “Nonresident” means any person who is not a resident
135 of this state or a resident who has moved from the state subse-
136 quent to bail bond enforcement activity within this state, and
137 among others includes a nonresident firm, partnership, corpora-
138 tion or voluntary association, or a firm, partnership, corporation
139 or voluntary association that has moved from the state subse-
140 quent to bail bond enforcement activity;

141 (3) “Nonresident defendant or defendants” means a
142 nonresident bail bond enforcer or bondsman who, either
143 personally or through his or her agent, is involved in any bail
144 bond enforcement activity occurring within this state resulting
145 in injury arising out of any breach of the applicable standard of
146 care with respect to any person other than a defendant whose
147 custody or appearance the bail bond enforcer secures or
148 attempts to secure, or with respect to the property of any person
149 other than a defendant whose custody or appearance the bail
150 bond enforcer secures or attempts to secure, which has given
151 rise to a civil action filed in any court in this state;

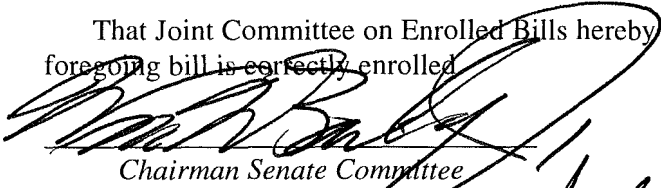
152 (4) “Insurance company” means any firm, corporation,
153 partnership or other organization which issues liability insur-
154 ance.

155 (i) The provision for service of process herein is cumulative
156 and nothing herein contained shall be construed as a bar to the

157 plaintiff in any action from having process in the action served
158 in any other mode and manner provided by law.

159 (j) This section is not retroactive and its provisions are not
160 available to a plaintiff in a cause of action arising out of acts
161 occurring prior to the effective date of this section.

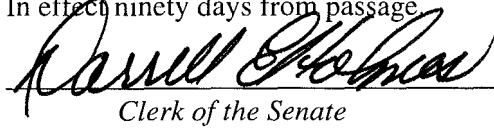
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

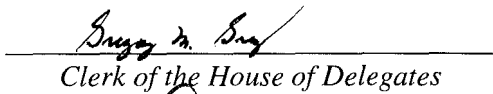

Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage.

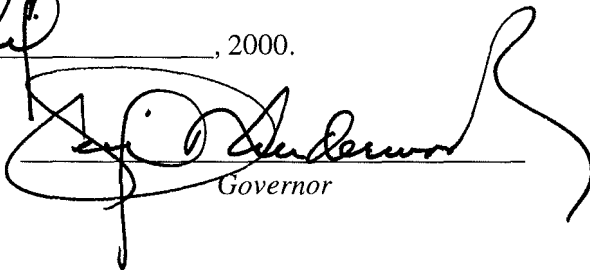

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 4th
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/00

Time 3:14 pm