

ENGROSSED SENATE
BILL NO. 561

BY: STIPE and WEEDN of the
SENATE

and

COX of the HOUSE

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;
AMENDING 59 O.S. 1981, SECTIONS 1303, AS LAST
AMENDED BY SECTION 5, CHAPTER 211, O.S.L. 1987,
1308, AS LAST AMENDED BY SECTION 2, CHAPTER 257,
O.S.L. 1989, 1327 AND 1332, AS LAST AMENDED BY
SECTION 3, CHAPTER 332, O.S.L. 1990 (59 O.S. SUPP.
1990, SECTIONS 1303, 1308 AND 1332), WHICH RELATES
TO BAIL BONDSMAN LICENSES; DELETING CERTAIN
EXEMPTION FROM WRITTEN EXAMINATION; MODIFYING TIME
PERIOD FOR ELIGIBILITY FOR EXAMINATION; REQUIRING
DISTRICT ATTORNEY TO DIRECT A HOLD ORDER TO
OFFICIAL IN CUSTODY OF CERTAIN DEFENDANTS; STATING
RESPONSIBILITY FOR CERTAIN EXPENSES IN RETURNING
DEFENDANTS; PROVIDING FOR EXONERATION OF BOND ON
CERTAIN CONDITIONS; DEFINING TERM; AND DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1981, Section 1303, as
last amended by Section 5, Chapter 211, O.S.L. 1987 (59 O.S. Supp.
1990, Section 1303), is amended to read as follows:

Section 1303. A. No person shall act in the capacity of a bail bondsman or perform any of the functions, duties or powers prescribed for bail bondsmen under the provisions of the act unless that person shall be qualified and licensed as provided in this act: Provided, however, that none of the provisions or terms of this section shall prohibit any individual or individuals from (1) pledging real or other property as security for a bail bond for himself or another in judicial proceedings who does not receive, or is not promised a fee or charge for his services provided such person shall not be permitted to make in excess of ten bonds per year or, (2) executing any bail bond for an insurer, pursuant to a bail bond service agreement entered into between such insurer and any automobile club or association, financing institution, insurance company or other organization or association, on behalf of a person required to furnish bail in connection with any violation of law arising out of the use of a motor vehicle.

B. No license shall be issued except in compliance with this act and none shall be issued except to an individual. License renewals shall be granted subject to all other provisions of this act: ~~Provided, that upon an affirmative showing to the Insurance Commissioner in writing by an individual that he is an all lines fire and casualty agent as defined in paragraph 10 of Section 1301 of this title, he shall not be required to take a written examination, but a surety bondsman license shall be issued to such individual upon making the application and payment of fee as herein required. Such individual shall be subject to and governed by all laws, rules and regulations contained herein relating to bail bondsmen, when engaged in the activities thereof.~~

A corporation as such shall not be licensed. Nothing herein contained shall be construed as repealing Section 11 of Title 5 of the Oklahoma Statutes; and it is further provided that licensed attorneys are prohibited from signing any bonds as surety in any

civil or criminal action pending or about to be filed in any court of this state.

SECTION 2. AMENDATORY 59 O.S. 1981, Section 1308, as last amended by Section 2, Chapter 257, O.S.L. 1989 (59 O.S. Supp. 1990, Section 1308), is amended to read as follows:

Section 1308. A. The applicant for bail bondsman shall be required to appear in person and take a written examination prepared by the Insurance Commissioner, testing his ability and qualifications to be a bail bondsman. Applications are valid for six (6) months after their submission. If an applicant has not acted upon his application within that period, a new application and fees shall be submitted for the applicant to be considered for licensure.

B. Each applicant shall become eligible for examination ~~sixty~~ ninety (90) days after the date the application is received by the Commissioner, if the applicant has completed twenty (20) hours of education as required by Section 1 of this act and the Commissioner is otherwise satisfied as to the applicant's fitness to take the examination. Examinations shall be held at such times and places as designated by the Commissioner, and applicant shall be given notice of such time and place not less than fifteen (15) days prior to taking the examination.

C. The fee for such examination shall be One Hundred Dollars (\$100.00) in addition to the license fee heretofore provided and shall be submitted with the application. Results will be mailed to the applicant within thirty (30) days after the applicant is examined.

D. The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations; provided, however, that at least three (3) months must intervene between examinations. Provided further, after the third and subsequent examination

failures, an applicant may not apply and be examined for at least one (1) year after the last examination failure.

SECTION 3. AMENDATORY 59 O.S. 1981, Section 1327, is amended to read as follows:

Section 1327. A. At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or bondsman may surrender the defendant, or the defendant may surrender himself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed. The defendant may be surrendered without the return of premium for the bond if he has been guilty of nonpayment of premium, changing address without notifying his bondsman, conceals himself, or leaves the jurisdiction of the court without the permission of his bondsman, or of violating his contract with the bondsman in any way that does harm to the bondsman, or the surety, or violates his obligation to the court.

B. If the defendant has been placed in custody of another jurisdiction, the district attorney shall direct a hold order to the official, judge or law enforcement agency where the defendant is in custody. All expenses accrued in returning the defendant to the original court shall be borne by the bondsman. Upon application, the bond in the original court shall be exonerated when the hold order is placed and upon proof of payment of expenses by the bondsman.

SECTION 4. AMENDATORY 59 O.S. 1981, Section 1332, as last amended by Section 3, Chapter 332, O.S.L. 1990 (59 O.S. Supp. 1990, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of the undertaking, the court before which the cause is pending shall declare the undertaking and any money, property or securities that have been deposited as bail, forfeited. In the event of the forfeiture of a

bail bond the clerk of the trial court shall notify within thirty (30) days after the forfeiture, by mail with return receipt requested, the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy on file.

B. The order and judgment of forfeiture shall be on forms prescribed by the Administrative Director of the Courts.

C. The bail bondsman shall have ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody. When the defendant is returned to custody within the ninety-day period, the forfeiture shall be vacated. For the purposes of this section, return to custody shall mean:

1. The return of the defendant to the appropriate law enforcement agency by the bondsman;
2. An appearance of the defendant in open court; or
3. Arrest of the defendant by law enforcement personnel.

D. If the defendant is not returned to custody within ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, the bondsman shall deposit cash or other valuable securities in the face amount of the bond with the court clerk ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made.

If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day from the date of service of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, then the court clerk shall notify the Insurance Commissioner by sending a certified copy of the final order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested. The Insurance Commissioner shall:

1. In the case of a surety bondsman immediately cancel the license privilege and authorization of the insurer to do business within the State of Oklahoma and cancel the appointment of all surety bondsman agents of the insurer who are licensed by Section 1301 et seq. of this title.

2. In the case of a professional bondsman, withdraw the face amount of the said forfeiture from the deposit provided in Section 1306 of this title. The Commissioner shall then immediately direct the professional bondsman, by mail with return receipt requested, to make additional deposits to bring the original deposit to the required level. Should the professional bondsman, after being notified, fail to make an additional deposit within ten (10) days from the receipt of notice, or mailing of notice if no receipt is made, his license shall be revoked and all sums presently on deposit shall be held by the Commissioner to secure the face amounts of bonds outstanding. Upon release of said bonds, any amount of deposit in excess of said bonds shall be returned to the bondsman. Provided, the bail bondsman shall have had such notice as required by the court, at the place of his business, of the trial or hearing of the defendant named in the bond. The notice shall have been at least ten (10) days before the required appearance of the defendant, unless the appearance is scheduled at the time of execution of the bond. Notwithstanding the foregoing, the bondsman shall be deemed to have had notice of the trial or hearing if the defendant named in the bond shall have been recognized back in open court to appear at a date certain for such trial or hearing.

E. 1. If the defendant's failure to appear was the result of being in the custody of a court other than the court in which his appearance was scheduled, forfeiture shall not lie.

2. Where the defendant is in the custody of another court, the district attorney or municipal attorney shall direct a hold order to the official, judge, court or law enforcement agent wherein the

defendant is in custody. Providing, that all expenses accrued as a result of returning the custody of the defendant shall be borne by the bondsman.

3. After the order and judgment has been paid, the bondsman may file a motion for remitter within one hundred eighty (180) days from receipt of the order and judgment of forfeiture, or mailing of the notice if no receipt is made, and, upon the event the defendant is returned to custody within ninety (90) days after payment is due, or, upon proof to the court that the defendant is still in custody in the other jurisdiction and that all expenses have been paid by the bondsman, the bondsman's property shall be returned. The court shall hear the motion for remitter within thirty (30) days from filing of the motion.

4. When a defendant does appear before the court as required by law and is sentenced or a deferred sentence is granted as provided for in Section 991c of Title 22 of the Oklahoma Statutes, in such event the undertaking and the bondsman and insurer shall forthwith be exonerated from further liability unless approved thereafter, in writing, by said bondsman.

5. The district attorney or municipal attorney shall not receive any fees, bonuses or other monies or property for or by reason of his services or actions in connection with or collection of bond forfeitures under the provisions of Section 1301 et seq. of this title.

F. The court clerk shall charge a fee of Ten Dollars (\$10.00) for the initial filing of any bond, which fee shall be assessed as a court cost to the defendant.

G. The above procedures shall be subject to the bondsman's rights of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture pursuant to the procedures for appeal set forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes. To stay the execution of the order and judgment of forfeiture, the

bondsman or insurer shall comply with the provisions set forth in Section 968 of Title 12 of the Oklahoma Statutes.

H. For municipal courts of record, the above procedures are criminal in nature and ancillary to the criminal procedures before the trial court and shall be subject to the bondsman's right of appeal. The bondsman or insurer may appeal an order and judgement of forfeiture by the municipal courts of record to the Court of Criminal Appeals.

I. If the actions of any bail bondsman force the Insurance Commissioner to withdraw monies, deposited pursuant to Section 1306 of this title, to pay past due executions more than two (2) times in a consecutive twelve-month period, then the license of such professional bondsman shall, in addition to other penalties, be suspended automatically for one (1) year or until a deposit equal to all outstanding forfeitures due is made. Such deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit, but in no case shall such increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated above.

J. Any bond written in this state shall contain the name and last-known mailing address of the bondsman and, if applicable, of the insurer.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 1991.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1991.

Speaker of the House of
Representatives