

ENGROSSED SENATE
BILL NO. 800

BY: BROWN of the SENATE

and

COX and BEGLEY of the HOUSE

AN ACT RELATING TO BAIL BONDS; AMENDING 36 O.S. 1991,
SECTION 4904 AND 59 O.S. 1991, SECTIONS 1301, 1305,
1308, 1309, 1312, 1320, 1332 AND 1336, WHICH RELATE
TO REPORTS, DEFINITIONS, LICENSURE, FEES,
DISCIPLINARY ACTIONS, REGISTRATION, FORFEITURE
PROCEDURES AND PENALTIES RELATING TO CERTAIN BAIL
BONDS; MODIFYING PERIOD FOR FILING CERTAIN REPORT;
CLARIFYING LANGUAGE; DELETING OBSOLETE LANGUAGE;
DELETING DEFINITION; MAKING CERTAIN FEES
NONREFUNDABLE; MODIFYING TIME FOR SUBMITTING
EXAMINATION FEE, RENEWAL FEE AND CERTAIN STATEMENT;
DELETING REFERENCES TO RUNNERS; EXEMPTING BONDSMAN
WRITING BONDS IN CERTAIN COUNTIES FROM CERTAIN
LIMIT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 4904, is
amended to read as follows:

Section 4904. A. Each insurer writing bail bonds in this state
shall file in the Office of the Insurance Commissioner quarterly
statements which shall exhibit the financial condition of the
insurer. The statements shall be in such general form and content

as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported, and as supplemented for additional information as required by the Commissioner. Such statements shall be subscribed and sworn by the president and secretary and other proper officers of the insurer. The statements shall be filed on or before the following dates:

1. First quarter statement, which shall include data from January 1 to March 31, on the last business day in April;

2. Second quarter statement, which shall include data from April 1 to June 30, on the last business day of July;

3. Third quarter statement, which shall include data from July 1 to September 30, on the last business day of October; and

4. Annual financial statement as described in Section 311 of ~~Title 36 of the Oklahoma Statutes~~ this title, which shall serve as fourth quarter statement and which shall be filed annually on the date specified in Section 311 of ~~Title 36 of the Oklahoma Statutes~~ this title, in the office of the Commissioner by each insurer writing bail bonds.

B. The statements required to be filed pursuant to subsection A of this section shall contain the loss reserve for bail bonds written in this state. Loss reserves shall be computed as twenty-five percent (25%) of the direct written premium of outstanding liability less monies held by the insurer in trust to pay losses from bail.

C. Each insurer writing bail bonds in this state shall file monthly reports based upon the previous month's activity with the Commissioner and on forms prescribed by the Commissioner within ~~fifteen (15)~~ thirty (30) days after the end of each preceding month, which shall include the following information and such other information as the Commissioner deems necessary:

1. Amount of deposit held by the Commissioner with a list of the securities available and their current valuation;

2. Bail bond premium volume for this state;
3. Administrative action, if any, taken by other states against the insurer;
4. List of collateral held by the insurer stating the location of collateral, the corresponding county involved, the case number and the bondsman soliciting the bond;
5. Loss ratio;
6. Outstanding liability; and
7. A list of agents or bondsmen whose contracts have been canceled.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1301, is amended to read as follows:

Section 1301. ~~The following words when used in this act shall have the following meanings:~~

~~1.~~ A. This act shall only apply ~~in~~ to the regulation of bail bonds for crimes, the punishment of which may be in excess of Twenty Dollars (\$20.00) fine or twenty (20) days in jail, or both such fine and imprisonment~~;~~.

~~2.~~ B. As used in this act:

1. "Commissioner" ~~shall mean~~ means the Insurance Commissioner of the State of Oklahoma;

~~3.~~ 2. "Clerk" ~~shall mean~~ means the district or municipal court clerk;

~~4.~~ 3. "Insurer" ~~shall mean~~ means any domestic, foreign or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this state;

~~5.~~ 4. "Bail bondsman" ~~shall mean~~ means a surety bondsman, professional bondsman, property bondsman, or a cash bondsman as hereinafter defined;

~~6.~~ 5. "Surety bondsman" ~~shall mean~~ means any person who has been approved by the Commissioner and appointed by an insurer or a

professional bondsman, by power of attorney, to execute or countersign bail bonds for the insurer or a professional bondsman, in connection with judicial proceedings and charges and receives money for his services;

~~7.~~ 6. "Managing general agent" (M.G.A.) ~~shall mean~~ means any person acting in the capacity of supervisor or manager over a licensed bondsman, who has been granted the authority or responsibility by a surety company to conduct surety business on its behalf, and to oversee the activities and conduct of the surety's appointed licensed bondsman agents, and who generally functions as an intermediate manager between the surety and its licensed bondsman agents. A managing general agent fulfilling these functions shall be a natural person, shall meet the qualifications of paragraph ~~6~~ 5 of this subsection and shall be licensed as a bondsman;

~~8.~~ 7. "Professional bondsman" ~~shall mean~~ means any person who has been approved by the Commissioner and who pledges cash as security for a bail bond in connection with a judicial proceeding and charges and receives money for his services;

~~9.~~ 8. "Property bondsman" ~~shall mean~~ means any person who has been approved by the Commissioner and who pledges real property as security for a bail bond in a judicial proceeding and charges and receives money for his services;

~~10.~~ 9. "Cash bondsman" ~~shall mean~~ means any person who has been approved by the Commissioner and who deposits cash money as security for a bail bond in a judicial proceeding and charges and receives money for his services;

~~11.~~ ~~"All lines fire and casualty agent" when used in this act shall mean an agent who holds a valid license issued by the Insurance Commissioner of the State of Oklahoma, to engage in the writing and transacting of all of the following lines and kinds of insurance: (a) Property insurance, (b) Casualty insurance, (c) Surety insurance, (d) Liability insurance and (e) Marine insurance;~~

~~12.~~ 10. "Escrow deposit" ~~shall mean~~ means cash or valuable security deposited by an insurer of a surety bondsman or professional bondsman to secure the face amount of forfeiture pending appeal; and

~~13.~~ 11. "Solicitation" ~~shall mean~~ means to ask for earnestly, seek to obtain by persuasion or entreaty, implore, beseech, tempt or entice a person directly or through another person by personal, mechanical, printed or published means to purchase a bail bond. ~~This Solicitation~~ shall not include mass communication advertising, which shall include, but not be limited to, television, newspapers, magazines and billboards.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1305, is amended to read as follows:

Section 1305. A. The application for license to serve as a bail bondsman must affirmatively show: Applicant is a person who has reached the age of twenty-one (21) years; of good character and reputation; not previously convicted of, or during the time of sentence which is received for a plea of guilty or nolo contendere to a felony or a misdemeanor involving moral turpitude; is a citizen of the United States, and has been a bona fide resident of the state for at least one (1) year, will actively engage in the bail bond business, and has knowledge, experience or instruction in the bail bond business.

B. The applicant shall apply in writing on forms prepared and supplied by the Insurance Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this act or on any renewal thereof, relating to his qualifications, residence, prospective place of business and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation he sees fit,

relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

C. Applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars (\$250.00) with his application, a complete set of his fingerprints and two recent credential-size full face photographs of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The applicant shall provide with the application an investigative fee of One Hundred Dollars (\$100.00) with which the Commissioner will conduct an investigation of the applicant. All fees shall be nonrefundable.

D. Failure of the applicant to secure approval of the Commissioner shall not preclude him from reapplying a second time, but a second application shall not be considered by the Commissioner within three (3) months subsequent to the date upon which the Commissioner denied the last application.

SECTION 4. AMENDATORY 59 O.S. 1991, 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 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 ~~4~~ 1308.1 of this ~~act~~ title 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~~ after approval of the application but prior to taking the examination. 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 5. AMENDATORY 59 O.S. 1991, Section 1309, is amended to read as follows:

Section 1309. A. A renewal license shall be issued by the Insurance Commissioner to a licensee who has continuously maintained same in effect, without further examination, upon payment of a renewal fee of One Hundred Dollars (\$100.00) for a bail bondsman and proof of completion of ten (10) hours of continuing education as required by Section ~~4~~ 1308.1 of this ~~act~~ title. The renewal fee shall be submitted by September 15 of each year. Such licensee shall in all other respects be required to comply with and be subject to the provisions of Section 1301 et seq. of this title.

B. In case of renewal of a professional bondsman license, the application shall also provide a financial statement prepared by an accounting firm or individual holding a permit to practice public accounting in this state in accordance with generally accepted principles of accounting procedures showing assets, liabilities, and net worth, said statement to be as of a date not earlier than ninety (90) days prior to submission of the license renewal application. The statements shall be attested to by an unqualified opinion of the

accounting firm or individual holding a permit to practice public accounting in this state that prepared the statement or statements. The statement shall be submitted by September 15 of each year.

C. If the license is not renewed or the renewal fee is not paid by September 30 of each year, such license shall expire automatically pursuant to Section 1304 of this title. If after November 30 of each year the license has not been renewed or the renewal fee paid, then such licensee shall be required to apply for a license as a new applicant.

D. Late renewal fees shall be double the original fee.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 1312, is amended to read as follows:

Section 1312. Any applicant for license as a bail bondsman ~~or runner~~ whose application has been denied or whose license shall have been ~~se~~ censured, suspended or revoked, or renewal thereof denied or a fine levied, shall have the right of appeal from such final order of the Commissioner thereon by filing a petition in the district court of Oklahoma County. Such judicial review shall be as prescribed by Sections 318 through 323 of Title 75 of the Oklahoma Statutes.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 1320, is amended to read as follows:

Section 1320. A. No bail bondsman shall become a surety on an undertaking unless he has first registered his license in the office of the sheriff and with the clerk of the district court in the county in which the bondsman resides or offices, but not both. In the county in which a bondsman registers his license, he shall provide the court clerk with proof that he is a resident of said county or that he offices in said county. The court clerk of the county shall provide a list of bondsmen permitted to write surety in that county to the judges and law enforcement offices of that county. In any county not having a licensed bondsman authorized to

do business within said county, the court having jurisdiction shall allow and fix bail.

A surety bondsman shall also file a certified copy of his appointment by power of attorney from the insurer which he represents as agent with each of said officers. A fee of Ten Dollars (\$10.00) shall be paid to the district court clerk for each county in which the bail bondsman registers his license. The fee shall be payable annually by the date of license renewal. The clerk of the district court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the Insurance Commissioner under the provisions of Section 1301 et seq. of this title.

B. Notwithstanding the foregoing provisions of this section, a bondsman may write bonds on no more than ten defendants per year in each of the remaining seventy-six counties of this state in which the bondsman cannot register his license. Provided, however, a bondsman shall not be limited to writing bonds on only ten defendants per year in a county which does not have a licensed bondsman registered in said county. The bondsman shall advise the court clerk of each such county in writing of his intention to write bonds in the county and shall file a certified copy of his license with and pay a fee of Ten Dollars (\$10.00) to each such court clerk.

SECTION 8. AMENDATORY 59 O.S. 1991, 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 Oklahoma law enforcement agency by the bondsman;

2. An appearance of the defendant in open court in the court where he was charged; or

3. Arrest within Oklahoma 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 9. AMENDATORY 59 O.S. 1991, Section 1336, is amended to read as follows:

Section 1336. Any person violating any of the provisions of this act relating to bondsman shall, upon conviction, be fined not more than Five Thousand Dollars (\$5,000.00) for each offense, or imprisoned in the county jail for not more than one (1) year, or by both such fine and imprisonment.

Any person acting as a bondsman ~~or runner~~ without a license shall be subject to the penalties provided in this section.

SECTION 10. This act shall become effective September 1, 1992.

Passed the Senate the 10th day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1992.

Speaker of the House of
Representatives