

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 800

BY: BROWN of the SENATE

and

COX and BEGLEY of the
HOUSE

AS INTRODUCED

AN ACT RELATING TO BAIL BONDS; AMENDING 59 O.S. 1991,
SECTIONS 1301, 1312 AND 1332, WHICH RELATE TO
DEFINITIONS, DISCIPLINARY ACTIONS AND FORFEITURE
PROCEDURES RELATING TO CERTAIN BAIL BONDS;
CLARIFYING LANGUAGE; DELETING OBSOLETE LANGUAGE;
AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 2. 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 3. 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 4. This act shall become effective September 1, 1992.

43-2-1699

JY