

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 604

By: Smith of the Senate

and

Benson of the House

COMMITTEE SUBSTITUTE

An Act relating to bail bondsmen; amending 36 O.S. 1991, Section 901, which relates to the Oklahoma Insurance Rating Act; amending 59 O.S. 1991, Sections 1308.1, 1309, as amended by Section 5, Chapter 98, O.S.L. 1992, 1332, as last amended by Section 7, Chapter 170, O.S.L. 1993 and 1334 (59 O.S. Supp. 1993, Sections 1309 and 1332), which relate to bail bondsmen; modifying scope of Oklahoma Insurance Rating Act; modifying certain continuing education requirements; providing procedures for issuance, acceptance, and forfeiture of property bonds; requiring certain bonds to include certain information; requiring court to vacate forfeiture under certain conditions; making provision requiring certain payment by bondsman inapplicable under certain conditions; providing for determination of pecuniary amount for purposes of admission to certain bail; providing for penalty; repealing 59 O.S. 1991, Section 1324, which relates to property bonds; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 901, is amended to read as follows:

Section 901. A. This article applies to every insurer including every stock or mutual insurer, reciprocal or interinsurance exchange or Lloyd's association authorized by any provisions of the laws of this state to transact any of the kinds of insurance covered by this article except:

1. Life insurance;
2. Accident and health insurance;
3. Reinsurance, other than joint reinsurance, to the extent stated in this act;

4. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

5. Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;

6. Insurers exempted under Section 110 of this title; ~~and~~

7. Title insurance; and

8. Insurance of bail bonds.

B. This article shall be administered by the State Board for Property and Casualty Rates.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1308.1, is amended to read as follows:

Section 1308.1 A. In order to be eligible to take the examination required to be licensed as a bail bondsman, each person shall complete not less than twenty (20) clock hours of education in subjects pertinent to the duties and responsibilities of a bail bondsman, including all laws and regulations related thereto. Further, each licensee shall complete annually not less than ~~ten (10)~~ eight (8) clock hours of continuing education in said subjects prior to renewal of the license. Such continuing education shall not include a written or oral examination.

Provided, any person licensed as a bail bondsman prior to the effective date of this act shall not be required to complete twenty (20) clock hours of education prior to licensure but shall be subject to the ~~ten-hours~~ eight-hours continuing education requirement in order to renew said license, except that a licensed bail bondsman who is sixty-five (65) years of age or older and who has been licensed as a bail bondsman for fifteen (15) years or more shall be exempt from both the education and continuing education requirements of this section.

B. The Oklahoma Bondsman Association shall provide education for bail bondsman licensure as required by this section; provided that the Insurance Commissioner shall approve the courses offered

and provided further such education meets the general standards for education otherwise established by the Insurance Commissioner.

C. The Oklahoma Bondsman Association shall submit an annual fee of One Hundred Dollars (\$100.00), payable to the Insurance Commissioner which shall be deposited in the State Insurance Commissioner Revolving Fund for the purposes of fulfilling and accomplishing the conditions and purposes of this section.

D. Any person who falsely represents to the Insurance Commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1310 of Title 59 of the Oklahoma Statutes.

E. The Commissioner shall adopt and promulgate such rules and regulations as are necessary for effective administration of this section.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1309, as amended by Section 5, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1993, 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)~~ eight (8) hours of continuing education as required by Section 1308.1 of this 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

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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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. Where the undertaking is an appearance bond secured by real property, and is posted by the defendant personally or by a surety, whether licensed bail bondsman or any other person, the undertaking shall provide the legal description of the property, the assessed valuation current within three (3) years, the status of the legal title ownership and identification of any holders of any reserved or lesser legal estates, and the amount of all encumbrances. The term encumbrances includes, but is not limited to, mortgages, liens, delinquent taxes, and assessments, and other written claims against the property filed of record in the office of the county clerk of the county in which the property is situated.

2. The undertaking shall be attached to a title examination or other appropriate record search determined to be sufficient by the court clerk or judge approving the bond, bearing a certificate of truth and accuracy of a bonded abstractor or bonded abstract company licensed within this state. The person preparing this document shall certify its accuracy through the close of the working day preceding the presentation of the bond for approval, clearly specifying the time and date of the certification. The abstractor or abstract company so certifying shall be liable on an official bond to the State of Oklahoma for any loss caused by negligence or inaccurate information provided under the

certificate, in addition to any civil liability which would otherwise lie. In addition to this certified record search, licensed bondsmen shall also provide all information which is otherwise required by law. The clerk or judge approving the bond may require such other affidavits or proof of sufficiency of the bond as they deem necessary. The information required on the record search may also be provided by seal of any county officer having record knowledge of same, at the discretion of the judge or clerk approving the bond.

3. In the case of a nonlicensed bondsman corporate surety, the surety shall provide proof of licensure in good standing by the Insurance Department of this state, power of attorney from the corporation to its agent, the duly executed and verified signatures of a resident agent of this state and the agent authorized to execute same under a power of attorney, all requisite countersignatures of corporate officers and corporate seal, and duly authenticated copies of its official minutes, bylaws or articles of incorporation, or other documentation which may be required by the approving officer of the authority of the surety to pledge corporate property and execute property bonds. The signature of the corporate surety's agents shall constitute a certificate by each of them that these requirements have been met. Corporate property shall not be pledged as security for property bonds written by licensed bondsmen.

B. At the discretion of the court clerk or judge approving the bond, a facsimile copy of the record search and certificate may be accepted, but within ten (10) days of the date of the certificate, the person or company making the certificate shall cause the document bearing the original certificate to be filed in the case. If the original document is not filed within ten (10) days, the court may issue a warrant for the arrest of the defendant or give notice to the surety to surrender the defendant within ten (10) days, and in addition, the court may proceed against the certifying individual or company for indirect contempt of court. The court may also make a determination that the individual or company certifying the document shall no longer be

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authorized to provide such appearance bond record searches in that county. If the court so determines, the court clerk shall mail a certified copy of the court's decision to the State Auditor and Inspector in the case of bonded abstractors and the State Insurance Commissioner in the case of title insurance companies, via certified mail, return receipt requested, for appropriate administrative action by those officers.

C. 1. Each person who signs a property bond as principal, surety, spouse or agent thereof shall provide his individual mailing address on the undertaking, and shall give written notice to the court through the case in which the bond is submitted of any later changes in this address. Every bond undertaking shall clearly state the foregoing requirement. Any legal notice which is required to be given to any signatory to the bond will be sufficient if it is mailed via certified mail, return receipt requested, to the signatory at the address listed on the bond, or as updated by the signatory, and the certified mail return receipt has been filed in the case indicating receipt by addressee or his agent, or that such mailing was refused or unclaimed by addressee. No further notice of the pendency of legal proceedings concerning the bond shall be required to be given to any signatory on the bond.

2. Each person who signs a property bond, whether as principal, surety, spouse, or agent thereof, shall be conclusively deemed to have submitted himself personally, or the corporation if signed by agent, to the jurisdiction of the district court of the county in which the bond is filed, for purposes involving bond forfeiture proceedings in the criminal case in which the bond was filed, or later civil foreclosure proceedings brought in that county. Notice of the foregoing shall be clearly given on the face of the undertaking. A judgment of forfeiture after the mailing provided by this section, shall be sufficient proof of diligent effort as to allow the court to authorize notice by publication in any civil foreclosure action brought in any county arising from the forfeiture proceedings.

D. 1. Any real property located within the State of Oklahoma, that is subject to execution, shall be acceptable for security for a bail bond. Homestead property may be accepted as security for the appearance bond if the homestead exemption is waived in writing, as executed and verified by both spouses.

2. The real property will be security on any property bond or bonds in an aggregate amount not exceeding four times the assessed valuation stated in the bonded abstractor's certificate, after first deducting:

- a. encumbrances or other claims against the property from that amount, and
- b. the amount of One Thousand Dollars (\$1,000.00) to cover the anticipated costs of foreclosure proceedings.

E. The court clerk, upon the approval of a property bond, shall file a certified copy of the bond in the office of the county clerk in which the property is located, transmitting to the county clerk the filing fee which will be paid by the person executing the bond. The county clerk shall index the bond upon his tract index as a lien against the described property, and such bond shall be a lien upon the real estate described therein until a certificate discharging the bond, made upon the request of a signatory to the bond, shall be filed in the office of the county clerk. Such lien shall be superior to any conveyance, encumbrance or lien pertaining to the property filed after the time and date of the record search certificate. When the bond shall have discharged, and upon request of a signatory to the bond, the clerk of the court shall issue to the surety a certificate of discharge in which the surety shall have described the bond and the real property, which shall, upon filing with the county clerk and the payment of the filing fee, be recorded in the tract index. An abstract company preparing an abstract upon such real estate shall be required to list in said abstract only the undischarged liens and shall not list any liens discharged by the filing of the certificate of discharge.

F. 1. If proceedings are instituted for forfeiture of the bond, notice shall be given via certified mail to the signatories as provided by subsection C of this section. At the conclusion of the forfeiture proceedings, the court may make an express finding that any or all interest, ownership, claim, right or entitlement of any signatory to the bond is extinguished in whole or in part, as the case may be, or such other orders as the court deems just, and such determination shall be dispositive of the interests of any such signatory in relation to the subject real property. A certified copy of said judgment shall be filed by the State of Oklahoma in the office of the county clerk in which the land is located, in addition to a statement of judgment, in the manner provided by Section 706 of Title 12 of the Oklahoma Statutes. Thereafter, at the election of the State of Oklahoma, formal foreclosure proceedings may be commenced concerning the residence of the property.

2. In the event the court clerk determines the bond is insufficient, the bond may be presented to the judge to whom the case is assigned for approval.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1332, as last amended by Section 7, Chapter 170, O.S.L. 1993 (59 O.S. Supp. 1993, 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, mail a true and correct copy of the order and judgment or forfeiture to the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy of the order and judgment of forfeiture on file.

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

C. 1. 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.

2. When the defendant is returned to custody within the ninety-day period, the forfeiture shall be vacated by an order of the court before which the cause is pending.

3. For the purposes of this section, return to custody shall mean:

- ~~1. The~~ a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman~~†~~
- ~~2. An~~ b. an appearance of the defendant in open court in the court where he was charged~~†~~
- ~~3. Arrest~~ c. arrest or incarceration within Oklahoma of the defendant by law enforcement personnel~~†~~ or
- ~~4. Arrest~~ d. arrest or incarceration of the defendant in any other jurisdiction, provided the bondsman has requested that a hold be placed on the defendant in the jurisdiction wherein the forfeiture lies, and has guaranteed reasonable travel expenses for the return of the defendant.

D. 1. If, 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:

- a. the defendant is not returned to custody, or
- b. the forfeiture has not been stayed, ~~or~~
- ~~c. the forfeiture has not been set aside,~~

the bondsman and if applicable, the insurer, whose risk it is, 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. Provided, this provision shall not apply if the defendant has been returned to custody within said ninety-day period and the court has failed to vacate the forfeiture pursuant to paragraph 2 of subsection C of this section.

2. After the order and judgment has been paid, the bondsman and if applicable, the insurer, whose risk it is, 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, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

3. 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 order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested.

4. 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. In no case shall such increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

5. The Insurance Commissioner shall:

- a. 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, and
- b. 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. Upon proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the defendant was in custody of another court on the day the defendant was due to appear, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

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.

F. 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.

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 968.1 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 judgment of forfeiture by the municipal courts of record to the Court of Criminal Appeals.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 1334, is amended to read as follows:

Section 1334. ~~(A)~~ A. Any person in custody before a court or magistrate of the State of Oklahoma subject to discretion of the court, may be admitted to bail on his personal recognizance subject to such conditions as the court or magistrate may reasonably prescribe to assure his appearance when required.

B. When a person is admitted to bail on his personal recognizance, the court or magistrate may determine an amount of money, property, or securities which shall be paid or forfeited as a penalty by the defendant for failure to comply with the terms of his admission to bail on personal recognizance. This penalty shall be in addition to the penalties provided for in Section 1335 of this title.

C. Any person admitted to bail as herein provided shall be fully appraised by the court or magistrate of the penalties provided for failure to comply with the terms of his recognizance and, upon a failure of compliance, a warrant for the arrest of such person shall be issued forthwith.

SECTION 7. REPEALER 59 O.S. 1991, Section 1324, is hereby repealed.

SECTION 8. This act shall become effective September 1, 1994.

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