ENROLLED SENATE
BILL NO. 604 By: Smith of the Senate

and

Benson of the House

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; 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; 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)~~ sixteen (16) 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)~~ sixteen (16) 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 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. 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. 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.

5. 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 5. 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 6. This act shall become effective September 1, 1994.

Passed the Senate the 19th day of May, 1994.

President of the Senate

Passed the House of Representatives the 25th day of May, 1994.

Speaker of the House of Representatives