

SHORT TITLE: Professions and occupations; amending sections relating to bail bondsmen; prohibiting presentation of bond previously signed and completed and requiring presenter sign form in presence of receiving official; requiring bond contain certain information; prohibiting charging of additional premium for bail substitution; exonerating undertaking, bondsman and insurer from further liability under certain conditions; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 307

By: Long (Lewis)

AS INTRODUCED

An Act relating to professions and occupations;

amending 59 O.S. 1991, Sections 1301, as amended by Section 2, Chapter 98, O.S.L. 1992, 1314, 1316, 1322, 1325, 1327 and 1332, as amended by Section 8, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1992, Sections 1301 and 1332), which relate to bail bondsmen; adding definition; requiring certain reports be postmarked and stamped received by Insurance Commissioner; prohibiting presentation of bond previously signed and completed and requiring presenter sign form in presence of receiving official; requiring bond contain certain information; authorizing court clerk to charge filing fee assessed as court cost to defendant; requiring amended affidavit be filed under certain conditions; prohibiting charging of additional premium for bail substitution; exonerating undertaking, bondsman and insurer from further liability under certain conditions; adding situations which require bondsman deposit cash or securities by certain time; providing for motion for remitter and return of bondsman's property under certain conditions; requiring automatic suspension of bondsman's license or certain deposit under certain conditions; conforming language by

deleting certain provisions; 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, as amended by Section 2, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1992, Section 1301), is amended to read as follows:

Section 1301. A. This act shall only apply 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.

B. As used in this act:

1. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

2. "Clerk" means the district or municipal court clerk;

3. "Insurer" 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;

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

5. "Surety bondsman" 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;

6. "Managing general agent" (M.G.A.) 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 5 of this subsection and shall be licensed as a bondsman;

7. "Professional bondsman" 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;

8. "Property bondsman" 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;

9. "Cash bondsman" 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;

10. "Escrow deposit" 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~~

11. "Solicitation" 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. Solicitation shall not include mass communication advertising, which shall include, but not be limited to, television, newspapers, magazines and billboards; and

12. "Bond" means an appearance bond for a specified monetary amount which is executed by the defendant and a licensed bondsman pursuant to the provisions of Section 1301 et seq. of this title and

which is issued to a court clerk as security for the subsequent court appearance of the defendant upon release from actual custody pending the appearance.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1314, is amended to read as follows:

Section 1314. A. When a bail bondsman or managing general agent accepts collateral, he shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. A description of the collateral shall be listed on the undertaking by affidavit. All property taken as collateral, whether personal, intangible or real, shall be receipted for and deemed, for all purposes, to be in the name of, and for the use and benefit of, the surety company or licensed professional bondsman, as the case may be. Every receipt, encumbrance, mortgage or other evidence of such custody, possession or claim shall facially indicate that it has been taken or made on behalf of the surety company or professional bondsman through its authorized agent, the individual licensed bondsman or managing general agent who has transacted the undertaking with the bond principal. Any mortgage or other encumbrance against real property taken under the provisions of this section which does not indicate beneficial ownership of the claim to be in favor of the surety company or professional bondsman shall be deemed to constitute a cloud on the title to real estate and shall subject the person filing, or causing same to be filed, in the real estate records of the county, to a penalty of treble damages or One Thousand Dollars (\$1,000.00), whichever is greater, in an action brought by the person, organization or corporation injured thereby.

For collateral taken, or liens or encumbrances taken or made pursuant to the provisions of this section, the individual bondsman or managing general agent taking possession of the property or making the lien, claim or encumbrance shall do so on behalf of his

surety company or professional bondsman, as the case may be, and such individual licensed bondsman shall be deemed to act in the capacity of fiduciary in relation to both:

1. The principal or other person from whom such property is taken or claimed against, and

2. The surety company or professional bondsman whose agent the licensed bondsman is.

As fiduciary and bailee for hire, the individual bondsman shall be liable in criminal or civil actions at law for failure to properly receipt or account for, maintain or safeguard, release or deliver possession upon lawful demand, in addition to any other penalties set forth in this subsection. No person who takes possession of property as collateral pursuant to this section shall use or otherwise dissipate such asset, or do otherwise with such property than to safeguard and maintain its condition pending its return to its lawful owner, or deliver to the surety company or professional bondsman, upon lawful demand pursuant to the terms of the bailment.

B. Every licensed bondsman shall file monthly by mail with return receipt requested with the Insurance Commissioner and on forms prescribed by the Commissioner as follows:

1. A notarized monthly report showing every bond written, amount of bond, whether released or revoked during each month, showing the court and county, and the style and number of the case, premiums charged and collateral received; and

2. Professional bondsmen shall submit by mail with return receipt requested notarized monthly reports showing total current liabilities, all bonds written during the month by the professional bondsman and by any licensed bondsman who may countersign for him, all bonds terminated during the month, and the total liability and a list of all bondsmen currently employed by such professional bondsmen.

Monthly reports shall be ~~received within fifteen (15) days after the end~~ postmarked and stamped "received" by the Insurance Commissioner by the fifteenth day of each ~~preceeding~~ month. Said records shall be maintained by the Commissioner as public records.

C. Every licensee shall keep at his place of business the usual and customary records pertaining to transactions authorized by his license. All such records shall be available and open to the inspection of the Commissioner at any time during business hours during the three (3) years immediately following the date of the transaction. The Commissioner may require a financial examination or market conduct survey during any investigation of a licensee.

D. Each bail bondsman shall submit each month with his monthly report, a reviewal fee equal to two-tenths of one percent (2/10 of 1%) of the new liability written for that month. Such fee shall be payable to the Insurance Commissioner who shall deposit same with the State Treasurer, who shall place the monies to the credit of the State Insurance Commissioner Revolving Fund. The monies so deposited shall be used for the further regulation of bail bonds pursuant to the provisions of this act.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1316, is amended to read as follows:

Section 1316. A. 1. A bail bondsman shall not sign nor countersign in blank any bond, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed surety bondsman or managing general agent directly employed by a licensed professional bondsman giving such power of attorney. The professional bondsman shall submit to the Commissioner the agreement between the professional bondsman and the employed bondsman. The professional bondsman shall notify the Commissioner whenever any agreement is canceled.

2. Bail bondsmen shall not allow other licensed bondsmen to present bonds that have previously been signed and completed. The individual that presents the bond shall sign the form in the presence of the official that receives the bond.

B. Premium charged must be indicated on the appearance bond prior to the filing of the bond.

C. A bail bondsman shall provide the indemnitors with a proper receipt which shall include fees, premium or other payments and copies of any agreements executed relating to the appearance bond.

D. All surety bondsmen or managing general agents shall attach a completed power of attorney to the appearance bond that is filed with the court clerk on each bond written.

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

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.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1322, is amended to read as follows:

Section 1322. A. Every "bondsman" shall file with the undertaking an affidavit stating whether or not he or anyone for his use has been promised or has received any security or consideration for his undertaking, and if so, the nature and description of security and amount thereof, and the name of the person by whom such promise was made or from whom such security or consideration was received. Any willful misstatement in such affidavit relating to the security or consideration promised or given shall render the person making it subject to the same prosecution and penalty as one who commits perjury.

B. An action to enforce any indemnity agreement shall not lie in favor of the surety against such indemnitor, except with respect

to agreements set forth in such affidavit. In an action by the indemnitor against the surety to recover any collateral or security given by the indemnitor, such surety shall have the right to retain only such security or collateral as it mentioned in the affidavit required above.

C. If security or consideration other than that reported on the original affidavit is received after the affidavit is filed with the court clerk, an amended affidavit shall be filed with the court clerk indicating such receipt of security or consideration.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1325, is amended to read as follows:

Section 1325. Bail may be substituted, without additional premium being charged, by the defendant or bondsman, at any time before a breach of the undertaking, by substituting any other proper and sufficient bond of like value as provided herein, ~~and the.~~ The official taking the new bail shall make an order ~~where~~ as follows:

1. Where money had been deposited, that the money be refunded to the person depositing the same; ~~where~~ and

2. Where property had been pledged, that a certificate of discharge be issued and the lien previously filed be released ~~and the.~~

The original undertakings of whatever nature shall be canceled and the new undertaking shall be substituted therefor.

SECTION 6. AMENDATORY 59 O.S. 1991, 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 reasonable expenses accrued in returning the defendant to the original court shall be borne by the bondsman who posted the bond with that court. 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.

C. 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 bondsman and insurer shall forthwith be exonerated from further liability unless approved thereafter, in writing, by the bondsman.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 1332, as amended by Section 8, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1992, 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. 1. ~~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~~;~~:

a. the defendant is not returned to custody,

b. the forfeiture has not been stayed, or

c. the forfeiture has not been set aside,

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.

2. 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, 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:

~~1.~~ ~~In 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

~~2.~~ ~~In 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.

~~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. 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.~~

~~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~~ 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 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 8. This act shall become effective September 1, 1993.

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