

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 577

By: Smith of the Senate

and

Benson of the House

( bail bondsmen - forfeiture of bonds -  
effective date )

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"( bail bond licensing - amending 59 O.S., Sections 1305, 1308, 1310, 1317, 1320 and 1332 - bail bonds - effective date )

SECTION 1. AMENDATORY 59 O.S. 1991, Section 1305, as amended by Section 3, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1994, 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~~ that the applicant:

1. Is a person who has reached the age of twenty-one (21) years;
2. Is of good character and reputation;
3. Has not been previously convicted of, or ~~during the time of sentence which is received for a plea of~~ pled guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude; ~~is~~

4. Is a citizen of the United States, ~~and has~~;

5. Has been a bona fide resident of the state for at least one (1) year, ~~will~~;

6. Will actively engage in the bail bond business, ~~i~~; and ~~has~~

7. Has knowledge, ~~or~~ experience, ~~or~~ has received 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, Section 1301 et seq. of this title, 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~~ An applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars (\$250.00) with ~~his~~ the application, a complete set of ~~his~~ the applicant's fingerprints and two recent credential-size full face photographs of ~~himself~~ the applicant. 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~~ the applicant 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 2. AMENDATORY 59 O.S. 1991, Section 1308, as amended by Section 4, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1994, 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~~ the applicant's 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~~ the 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)~~ sixteen (16) hours of education as required by Section 1308.1 of this 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 the applicant shall be given notice of ~~such~~ the time and place not less than fifteen (15) days prior to taking the examination.

C. The fee for ~~such~~ the examination shall be One Hundred Dollars (\$100.00) in addition to the license fee heretofore provided and shall be submitted 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~~ the applicant from taking subsequent examinations; provided, however, that at least three (3) months must intervene between examinations. ~~Provided;~~ and provided further, after ~~the a~~ third ~~and~~ or subsequent examination ~~failures~~ failure, an applicant may not apply and be examined for at least one (1) year after the last examination failure.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1310, is amended to read as follows:

Section 1310. A. The Insurance Commissioner may deny, censure, suspend, revoke, or refuse to renew any license issued under Section 1301 et seq. of this title for any of the following causes:

1. For any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner;

2. Violation of any laws of this state or any lawful rule, regulation, or order of the Commissioner relating to bail in the course of dealing under the license issued ~~him~~ by the Commissioner;

3. Material misstatement, misrepresentation, or fraud in obtaining the license;

4. Misappropriation, conversion, or unlawful withholding of monies or property belonging to insurers, insureds, or others and received in the conduct of business under the license;

5. Conviction of, or ~~during the time of sentence which is received for a~~ having entered a plea of guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude;

6. Fraudulent or dishonest practices in ~~the conduct of~~ conducting business under the license;

7. Failure to comply with, or violation of any proper order, rule, or regulation of the Commissioner;

8. Recommending any particular attorney-at-law to handle ~~the~~ a case in which the bail bondsman has caused a bond to be issued under the terms of Section 1301 et seq. of this title;

9. When, in the judgment of the Commissioner, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering ~~him~~ the licensee unfit to carry on the bail bond business or making ~~his~~ continuance in ~~such~~ the business detrimental to the public interest, or that ~~he~~ the licensee is no longer in good faith carrying on the bail bond business, or that ~~he~~ the licensee is

guilty of rebating, or offering to rebate, or dividing with someone other than a licensed bail bondsman, or offering to divide ~~his~~ commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for ~~such reasons~~ this conduct is found by the Commissioner to be a source of detriment, injury, or loss to the public;

10. For any materially untrue statement in the license application;

11. Misrepresentation of the terms of any actual or proposed bond;

12. For forging the name of another to a bond or application for bond;

13. Cheating on an examination for licensure;

14. Soliciting business in or about any place where prisoners are confined, arraigned or in custody;

15. For paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer, or officer of the law, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof, or to secure delay or other advantage. This shall not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant;

16. For paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

17. For paying a fee or rebating or giving or promising anything of value to the principal or anyone in ~~his~~ the principal's behalf;

18. Participating in the capacity of an attorney at a trial or hearing of one on whose bond ~~he~~ the licensee is surety;

19. Accepting anything of value from a principal, other than the premium. ~~Provided;~~ provided, the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned immediately upon final termination of liability on the bond. ~~Such collateral~~ Collateral security or other indemnity required by the bondsman shall be reasonable in relation to the amount of the bond;

20. Willful failure to return collateral security to the principal when the principal is entitled thereto;

21. For failing to notify the Commissioner of a change of address, as noted on the license, within five (5) days after ~~such a~~ a change is made, or failing to respond to a properly mailed notification within a reasonable amount of time;

22. For failing to file a report as required by Section 1314 of this title;

23. For filing a materially untrue monthly report;

24. For filing false affidavits regarding cancellation of the appointment of an insurer;

25. Forcing the Commissioner to withdraw deposited monies to pay forfeitures or any other outstanding judgments;

26. For failing to pay any fees to a district court clerk as are required by this title or failing to pay any fees to a municipal court clerk as are required by this title or by Section 28-127 of Title 11 of the Oklahoma Statutes; ~~and~~

27. For uttering an insufficient check to the Insurance Commissioner for any fees, fines or other payments received by the Commissioner from the bail bondsman; and

28. For failing to pay travel expenses for the return of the defendant to custody once having guaranteed the expenses pursuant to the provisions of subparagraph d of paragraph 3 of subsection C of Section 1332 of this title.

B. In addition to, or in lieu of, any applicable denial, censure, suspension or revocation of a license, any person violating any provisions of Sections 1301 et seq. of this title may be subject to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. ~~Such~~ This fine may be enforced in the same manner in which civil judgments may be enforced.

C. No bail bondsman or bail bond agency shall advertise as or hold itself out to be a surety company.

D. If any bail bondsman is convicted by any court of a violation of any of the provisions of this act, the license of ~~such~~ the individual shall therefore be deemed to be immediately revoked, without any further procedure relative thereto by the Commissioner.

E. The Commissioner shall retain jurisdiction for one (1) year after notification of an alleged violation as to any person who cancels ~~his~~ a bail bondsman's license or allows ~~said~~ a license to lapse, if the alleged violation occurred while the person was licensed as a bondsman. Notice and hearing shall be conducted in the same manner as if the person still maintained a bondsman's license. If the Commissioner determines that a violation of the provisions of Sections 1301 through 1340 of this title occurred, any order issued by the Commissioner pursuant to ~~said~~ the determination may become a permanent record in the file of the person and may be used if ~~such~~ the person should request relicensure or reinstatement.

F. Any law enforcement agency, district attorney's office, court clerk's office, or insurer that is aware that a licensed bail bondsman has been convicted of a felony, or a crime involving moral turpitude, or has pleaded guilty or nolo contendere to a crime as aforementioned, shall notify the Insurance Commissioner of ~~said~~ that fact.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1317, is amended to read as follows:

Section 1317. A. ~~Every surety shall annually, prior to the last day of December, furnish the Insurance Commissioner a list of all surety bondsmen or managing general agents appointed by it to write bail bonds on its behalf.~~ Every such surety who subsequently appoints a surety bondsman or managing general agent in the state, shall give notice thereof to the Commissioner and, ~~if an applicant, a written application for license for said bondsman or agent.~~ All such appointments shall be subject to the issuance of a license to such surety bondsman or managing general agent. The filing fee for appointment of each surety bondsman or managing general agent shall be ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00), payable to the Commissioner and shall be submitted with the appointment. The appointment shall remain in effect until the surety submits a notice of cancellation to the Commissioner. If the surety changes the liability limitations of the surety bondsman or the managing general agent, or any other provisions of the appointment, the surety shall submit an amended appointment form and a filing fee of Ten Dollars (\$10.00) payable to the Commissioner.

B. A surety terminating the appointment of a surety bondsman or managing general agent immediately shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman or managing general agent. ~~Such~~ The notice filed with the Commissioner shall state the reasons, if any, for ~~such~~ the termination.

C. Prior to issuance of a new surety appointment for a surety bondsman or managing general agent, the bondsman or agent shall file an affidavit with the Commissioner stating that no premiums are owed to any insurer. This provision shall not require that all outstanding liabilities have been exonerated, but may provide that ~~such~~ the liabilities are still being monitored by the bondsman or agent.

D. Every bail bondsman who negotiates and posts a bond shall, in any controversy between the defendant, indemnitor, or guarantor and the bail bondsman or ~~his~~ surety, be regarded as representing the surety. This provision shall not affect the apparent authority of a bail bondsman as an agent for the insurer.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1320, as amended by Section 7, Chapter 98, O.S.L. 1992 (59 O.S. Supp. 1994, Section 1320), is amended to read as follows:

Section 1320. A. 1. No bail bondsman shall become a surety on an undertaking unless ~~he~~ the bondsman has first registered ~~his~~ the bondsman's 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~~ the license, ~~he~~ the bondsman shall provide the court clerk with proof that he or she is a resident of ~~said~~ the county or that he or she offices in ~~said~~ the 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~~ the county, the court having jurisdiction shall allow and fix bail.

2. A surety bondsman shall also file a certified copy of ~~his~~ appointment by power of attorney from the insurer which he or she represents as agent with each of ~~said~~ the 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~~ the bondsman's 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~~ the 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~~ the bondsman's license. ~~Provided;~~ 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~~ the county. ~~The~~ In each of the remaining seventy-six counties, the bondsman shall advise the court clerk of each ~~such~~ county in writing of ~~his~~ an intention to write bonds in the county and shall file a certified copy of ~~his~~ the bondsman's license with and pay a fee of Ten Dollars (\$10.00) to each ~~such~~ court clerk. The clerk of the district court shall not permit the filing of a bail bondsman unless the bondsman is currently licensed by the Insurance Commissioner.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 1332, as last amended by Section 4, Chapter 331, O.S.L. 1994 (59 O.S. Supp. 1994, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of ~~the~~ an 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 on the day the defendant failed to appear. In the event of the forfeiture of a bail bond the clerk of the trial court shall, within thirty (30) days after the forfeiture, by mail with return receipt requested, mail a true and correct copy of the order and judgment ~~of~~ of 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 court record indicates that the defendant is returned to custody within the ninety-day period, the court shall enter a minute vacating the forfeiture ~~shall be vacated by an order of the court before which the cause is pending~~ and exonerating the bond. If the defendant has been timely returned to custody, but this is not reflected by the court record, the court shall vacate the forfeiture and exonerate the bond.

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

- a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman,
- b. an appearance of the defendant in open court in the court where ~~he was~~ charged,
- c. arrest or incarceration within ~~Oklahoma~~ this state of the defendant by law enforcement personnel, or
- 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.

4. In addition to the provisions set forth in paragraphs 2 and 3 of this subsection, the court may vacate the forfeiture and exonerate the bond in any felony case in which:

- a. the bondsman has requested in writing of the sheriff's department in the county where the forfeiture occurred that the defendant be entered into the computerized records of the National Crime Information Center, and
- b. the request has not been honored within thirty (30) business days of the receipt of the written request by the department.

5. The court may, in its discretion, vacate the order of forfeiture and exonerate the bond where good cause has been shown for:

- a. the defendant's failure to appear, or
- b. the bondsman's failure to return the defendant to custody within the required ninety (90) days.

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,

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;~~ provided, this provision shall not apply if the defendant has been returned to custody within ~~said~~ the ninety-day period and the court has failed to vacate the forfeiture pursuant to ~~paragraph~~ paragraphs 2 through 5 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~~ the 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~~ the bonds, any amount of deposit in excess of ~~said~~ the bonds shall be returned to the bondsman. ~~Provided;~~ provided, the bail bondsman shall have had ~~such~~ notice as required by the court, at the place of ~~his~~ the bondsman's 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~~ the 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~~ the 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~~ The deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall ~~such~~ an increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

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~~ the 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;~~ provided, 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 7. This act shall become effective November 1, 1995."

Passed the House of Representatives the 6th day of April, 1995.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1995.

President of the Senate