

SHORT TITLE: Bail bonds; modifying application requirements; clarifying conditions under which collateral security or other indemnity shall be returned to a principal; modifying prohibition against felons; updating statutory reference; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 281

By: Stipe

AS INTRODUCED

An Act relating to bail bonds; amending 59 O.S. 1991, Sections 1305, as last amended by Section 1, Chapter 357, O.S.L. 1995, 1310, as amended by Section 3, Chapter 357, O.S.L. 1995, 1315, as amended by Section 49, Chapter 274, O.S.L. 1995, and 1332, as last amended by Section 5, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Sections 1305, 1310, 1315, and 1332), which relate to licensure of bondsmen and forfeiture procedure; modifying application requirements; clarifying conditions under which collateral, security, or other indemnity shall be returned to principal; modifying prohibition against felons serving as bondsmen to prohibit service by persons convicted of felony or misdemeanor involving moral turpitude; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 1305, as last amended by Section 1, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1305), is amended to read as follows:

Section 1305. A. The application for license to serve as a bail bondsman must affirmatively show 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 pled guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude;
4. Is a citizen of the United States;
5. Has been a bona fide resident of the state for at least one (1) year;
6. Will actively engage in the bail bond business; ~~and~~
7. Has knowledge or experience, or has received instruction in the bail bond business; and
8. Has a high school diploma or its equivalent.

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 pursuant to Section 1301 et seq. of this title, or on any renewal thereof, relating to 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 relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

C. An applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars (\$250.00) with the application, a complete set of the applicant's fingerprints and two recent credential-size full face photographs of 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 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~~ after denial of the last application.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1310, as amended by Section 3, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, 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 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 having entered a plea of guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude;

6. Fraudulent or dishonest practices in 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 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 the licensee unfit to carry on the bail bond business or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or dividing with someone other than a licensed bail bondsman, or offering to divide commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for 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, law enforcement officer, or other 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~~ an action on a bond;

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

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

19. Accepting anything of value from a principal, other than the premium; 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 and upon satisfaction of all terms, conditions, and obligations contained within the indemnity agreement. 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 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;

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~~ provision 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. 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 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 a bail bondsman's license or allows 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 the determination may become a

permanent record in the file of the person and may be used if the person should request ~~relicensure~~ licensure 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 that fact.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1315, as amended by Section 49, Chapter 274, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1315), is amended to read as follows:

Section 1315. A. The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond:

1. Persons convicted, ~~or who are within the term of sentencing for pleading~~ of, or who pled guilty or nolo contendere to, a felony or misdemeanor involving moral turpitude;

2. Jailers;

3. Police officers;

4. Committing judges;

5. Municipal or district court judges;

6. Prisoners;

7. Sheriffs, deputy sheriffs, and any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners;

8. Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an officer, director, or stockholder of any corporation holding such a permit;

9. Any person who is an agent, employee, or owner of any establishment at which low-point beer as defined by Section 163.2 of

Title 37 of the Oklahoma Statutes is sold for on-premises consumption;

10. Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent, officer, or employee of any such licensee;

11. Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided; and

12. Any person, agent, or employee of a retail liquor package ~~stores~~ store.

B. This section shall not apply to a sheriff, deputy sheriff, police officer, or officer of the law who is not on duty and who assists in the apprehension of ~~any~~ a defendant.

C. The provisions of this section shall not apply to persons possessing permits or licenses pertaining to low-point beer or alcoholic beverages, as defined in Sections 163.2 and 506 of Title 37 of the Oklahoma Statutes, which were issued prior to May 23, 1984. ~~However, no~~ No one shall be permitted to maintain an office for conducting bail bonds business where low-point beer or alcoholic beverages are sold for on-premises consumption.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1332, as last amended by Section 5, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of 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 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 in the jurisdiction where forfeiture occurred, within the ninety-day period, the court clerk shall enter ~~a minute~~ minutes vacating the forfeiture 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 charged,
- c. arrest or incarceration within 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~~r~~, 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 the ninety-day period and the court has failed to vacate the forfeiture pursuant to 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~~ after 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, 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 the bonds, any amount of deposit in excess of the bonds shall be returned to

the bondsman; provided, the bail bondsman shall have had notice as required by the court, at the place of 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 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 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. The deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall 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 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; 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 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~~ 990.4 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. This act shall become effective November 1, 1997.

46-1-0263

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