

EHB 1540

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THE STATE SENATE
Wednesday, April 13, 2005

ENGROSSED
House Bill No. 1540
As Amended

ENGROSSED HOUSE BILL NO. 1540 - By: PETERSON (Ron) of the House and PRUITT of the Senate.

An Act relating to cities and towns; amending 11 O.S 2001, Section 27-104, as amended by Section 2, Chapter 173, O.S.L. 2004 (11 O.S. Supp. 2004, Section 27-104), which relates to courts; deleting authorization for a governing body to appoint the mayor as a judge; clarifying judicial requirements for conducting certain trials; amending Section 2, Chapter 148, O.S.L. 2004 (22 O.S. Supp. 2004, Section 1108.2), which relates to the State and Municipal Traffic Bail Bond Procedure Act; deleting reference to municipal court for personal recognizance bond procedures; deleting certain court findings and action taken on offender; deleting certain court appearance options for an offender; allowing a certain fee to apply to a security deposit filed with a court clerk; clarifying the type of fee to be deposited in certain fund; amending 59 O.S. 2001, Section 1316, as amended by Section 1, Chapter 550, O.S.L. 2004 (59 O.S. Supp. 2004, Section 1316), which relates to bail bondsman; removing requirement for collection of certain fee; repealing 11 O.S. 2001, Section 27-129, as amended by Section 5, Chapter 173, O.S.L. 2004 (11 O.S. Supp. 2004, Section 27-129), which relates to municipal courts; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 27-104, as amended by Section 2, Chapter 173, O.S.L. 2004 (11 O.S. Supp. 2004, Section 27-104), is amended to read as follows:

1 Section 27-104. A. The number of judges for each municipal
2 court shall be determined by the governing body of the municipality
3 where the court is established. The judge of each municipal court
4 shall be appointed by the mayor of the municipality where the court
5 is established, with the consent of the municipal governing body.
6 The judge of any municipal court shall be licensed to practice law
7 in Oklahoma, except as provided for in subsections B and C of this
8 section. He shall serve for a term of two (2) years, said term
9 expiring on a date fixed by ordinance, and until his successor is
10 appointed and qualified, unless removed by the vote of a majority of
11 all members of the governing body for such cause as is provided for
12 by law for the removal of public officers. Any appointment to fill
13 a vacancy shall be for the unexpired term. Except in cities with a
14 population of more than two hundred thousand (200,000), nothing in
15 the provisions of this section shall be construed to prevent the
16 judge from engaging in the practice of law in any other court during
17 his tenure of office. The judge shall be paid a salary to be fixed
18 by the municipal governing body. He shall be paid in the same
19 manner as other municipal officials.

20 B. In any municipality with a population of less than seven
21 thousand five hundred (7,500), the mayor, with the consent of the
22 governing body of the municipality, may appoint as judge:

1 1. An attorney licensed to practice law in Oklahoma, who
2 resides in the county in which the municipality is located or in an
3 adjacent county; or

4 2. An attorney licensed to practice law in Oklahoma who
5 maintains a permanent office in the municipality; or

6 3. Any suitable person who resides in the county in which the
7 municipality is located or in an adjacent county.

8 ~~The mayor may be designated as judge of the municipal court upon~~
9 ~~approval of the governing body of the municipality.~~

10 C. In any municipality with a population of seven thousand five
11 hundred (7,500) or more, if no attorney licensed to practice law in
12 Oklahoma resides in the county or in an adjacent county in which the
13 municipality is located, who is at the time of appointment willing
14 to accept the appointment as judge, the mayor, with the consent of
15 the governing body of the municipality, may appoint any suitable and
16 proper person as judge.

17 D. If the judge of the municipal court is not a licensed
18 attorney and has not complied with the ~~judicial~~ education
19 requirements pursuant to subsection F of this section and the
20 ~~judicial~~ education requirements pursuant to Section 18-101 of Title
21 47 of the Oklahoma Statutes, the trial shall be to the court, and
22 the court may not impose a fine of more than Fifty Dollars (\$50.00),

1 and may not order the defendant imprisoned except for the nonpayment
2 of fines or costs or both.

3 E. If the judge of the municipal court is not a licensed
4 attorney but has complied with the ~~judicial~~ education requirements
5 of subsection F of this section and the ~~judicial~~ education
6 requirements pursuant to Section 18-101 of Title 47 of the Oklahoma
7 Statutes, the maximum fine that may be imposed shall be Five Hundred
8 Dollars (\$500.00).

9 F. In order to impose the fine authorized by subsection E of
10 this section, a nonlawyer judge must, within a period not to exceed
11 the preceding reporting period in this state for mandatory
12 continuing legal education, complete courses held for municipal
13 judges which have been approved by the Oklahoma Bar Association
14 Mandatory Legal Education Commission for at least six (6) hours of
15 continuing ~~judicial~~ education credit. Verification may be made by a
16 statement of attendance signed by the course registration personnel.

17 SECTION 2. AMENDATORY Section 2, Chapter 148, O.S.L.
18 2004 (22 O.S. Supp. 2004, Section 1108.2), is amended to read as
19 follows:

20 Section 1108.2 A. Personal recognizance bonds in traffic and
21 wildlife tickets are defined as bonds in lieu of arrest indicating a
22 written promise to pay or appear by a date certain before a district
23 ~~or municipal~~ court. The offender affixing his or her signature on a

1 uniform citation shall evidence the creation of a personal
2 recognizance bond. Upon expiration of the pay or appear date, the
3 court clerk shall notify the offender by mailing a notice of ~~intent~~
4 ~~to request~~ any action by the court to authorize any or all of the
5 following sanctions:

6 1. A warrant for the arrest of the offender;

7 2. Suspension of the offender's driver license and, if
8 applicable, any license issued by the Department of Wildlife
9 Conservation; and

10 3. A judgment by the district court equal to the bond schedule
11 published for the violation plus the costs of all notices and
12 collection costs incurred, in lieu of fines and cost. A failure to
13 appear shall have the same weight as a plea of nolo contendere.

14 B. The court clerk shall inform the court if the offender has
15 not responded to the uniform citation ~~and notice within thirty (30)~~
16 ~~days of the mailing of the notice to the address on the uniform~~
17 ~~citation.~~ The court may issue a warrant for the offender's failure
18 to appear⁷. The district court may reduce the financial obligation
19 to judgment equal to the amount of the bond schedule plus all costs
20 incurred in mailing notices, and a ten percent (10%) surcharge to
21 the court fund for the necessity of processing by the court clerk,
22 said judgment to be for the purpose of paying an assessment in lieu

1 of fines and costs, or both. License suspension shall be requested
2 in all cases.

3 C. Collection of judgment in lieu of fines and costs shall be
4 collected only as a condition precedent to the reinstatement of any
5 license suspended by the offender's default upon his or her duty to
6 pay or appear on the uniform citation. Failure to appear on the
7 uniform citation shall be considered a default in the nature of a
8 plea of nolo contendere resulting in a finding of guilt based upon
9 the facts appearing solely on the face of the citation. The filing
10 of a properly completed citation with the court shall constitute
11 prima facie evidence of the merits of the case. ~~If the court finds~~
12 ~~that the prima facie evidence is insufficient to show probable~~
13 ~~cause, no forfeiture shall be ordered. Upon such finding, the court~~
14 ~~may either dismiss the ticket without costs or issue a warrant for~~
15 ~~the arrest of the offender and the suspension of any applicable~~
16 ~~licenses. Upon the arrest or appearance of the offender, the matter~~
17 ~~shall be set for disposition upon the next applicable term or docket~~
18 ~~of the court. The court shall annotate on the uniform citation the~~
19 ~~action that was taken, and that information shall be forwarded by~~
20 ~~the court clerk as part of the abstract provided to the Department~~
21 ~~of Public Safety and the Department of Wildlife Conservation, if~~
22 ~~applicable.~~

1 D. ~~At the court appearance, the offender may show cause to the~~
2 ~~court for his failure to pay or appear, if the appearance occurs~~
3 ~~within one (1) year of the court's action as within one (1) year of~~
4 ~~the action set forth in subsection C of this section. If no action~~
5 ~~is taken by the appearance of the offender within one (1) year, the~~
6 ~~order shall be final and unappealable.~~ If the offender appears
7 within one (1) year and shows to the court by clear and convincing
8 evidence that his or her failure to pay or appear was through no
9 willful fault or failure on his or her part, the court may set aside
10 its prior actions and set the matter for hearing if to do so would
11 be in the public's best interest and in the interest of justice. In
12 such event, the offender shall post an appearance bond as provided
13 in Section 1105 of this title, subject to all sanctions provided
14 therein for failure to appear or comply with reasonable bond
15 conditions. ~~No forfeiture shall take place as to such cases,~~
16 ~~however all costs of notices and recovery shall be assessed as~~
17 ~~further costs of the action.~~

18 **SECTION 3. NEW LAW A new section of law to be codified**
19 **in the Oklahoma Statutes as Section 153.2 of Title 28, unless there**
20 **is created a duplication in numbering, reads as follows:**

21 The court clerk shall charge a fee of Thirty-five Dollars
22 (\$35.00) for the initial filing of any bond or any security
23 deposited with the court clerk for the subsequent court appearance

1 of the defendant, which fee shall be assessed as an additional court
2 cost to the defendant. The court clerk shall remit on a monthly
3 basis Twenty-five Dollars (\$25.00) of every thirty-five-dollar fee
4 imposed on a defendant sentenced to jail to the Sheriff's Jail Fund
5 as established by the county commissioners or to a special revenue
6 fund of the entity operating the jail or to a fund designated by the
7 municipal governing body of any municipality that pays another
8 entity for housing municipal prisoners.

9 **SECTION 4.** AMENDATORY 59 O.S. 2001, Section 1316, as
10 amended by Section 1, Chapter 550, O.S.L. 2004 (59 O.S. Supp. 2004,
11 Section 1316), is amended to read as follows:

12 Section 1316. A. 1. A bail bondsman shall neither sign nor
13 countersign in blank any bond, nor shall the bondsman give a power
14 of attorney to, or otherwise authorize, anyone to countersign his or
15 her name to bonds unless the person so authorized is a licensed
16 surety bondsman or managing general agent directly employed by a
17 licensed professional bondsman giving such power of attorney. The
18 professional bondsman shall submit to the Commissioner the agreement
19 between the professional bondsman and the employed bondsman. The
20 professional bondsman shall notify the Commissioner whenever any
21 agreement is canceled.

22 2. Bail bondsmen shall not allow other licensed bondsmen to
23 present bonds that have previously been signed and completed by

1 other licensed bondsmen unless a written authorization is on file
2 with the court clerk where the bond is filed. The individual that
3 presents the bond shall sign the form in the presence of the
4 official that receives the bond.

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

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

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

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

16 ~~F. The court clerk shall charge a fee of Thirty-five Dollars~~
17 ~~(\$35.00) for the initial filing of any bond, which fee shall be~~
18 ~~assessed as a court cost to the defendant. The court clerk shall~~
19 ~~remit on a monthly basis Twenty-five Dollars (\$25.00) of every~~
20 ~~thirty-five-dollar fee to the Sheriff's Jail Fund or to a special~~
21 ~~revenue fund of the entity operating the jail.~~

1 **SECTION 5.** REPEALER 11 O.S. 2001, Section 27-129, as
2 amended by Section 5, Chapter 173, O.S.L. 2004 (11 O.S. Supp. 2004,
3 Section 27-129), is hereby repealed.

4 **SECTION 6.** This act shall become effective November 1, 2005.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
6 As Amended.