ESB 1797

THE HOUSE OF REPRESENTATIVES
Monday, March 31, 2008

ENGROSSED

Senate Bill No. 1797

ENGROSSED SENATE BILL NO. 1797 - By: CRAIN of the Senate and TERRILL, KIESEL, ROAN AND SHERRER of the House.

An Act relating to bail bondsmen; amending 59 O.S. 2001, Section 1332, as last amended by Section 1, Chapter 97, O.S.L. 2007 (59 O.S. Supp. 2007, Section 1332), which relates to forfeiture procedure; requiring exoneration of bond under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 1332, as last amended by Section 1, Chapter 97, O.S.L. 2007 (59 O.S. Supp. 2007, 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 issue an arrest warrant for the defendant and 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; provided, the clerk shall not

be required to mail the order and judgment of forfeiture to the bondsman or insurer if, within fifteen (15) days from the date of forfeiture, the defendant is returned to custody, the bond is reinstated by the court with the bondsman's approval, or the order of forfeiture is vacated or set aside by the court. Failure of the clerk of the trial court to comply with the thirty-day notice provision in this subsection shall exonerate the bond by operation of law.

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 minutes vacating the forfeiture and exonerating the bond. If the defendant has been timely returned to custody, but this fact 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~~ <u>means</u>:

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,

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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 bond shall be exonerated by operation of law in any 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 fourteen (14) business days of the receipt of the written request by the department, or

b. the defendant has been arrested outside of this state and the court record shows the prosecuting attorney has declined to proceed with extradition.

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 ninety (90) days.

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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, the defendant is not returned to custody, or 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, 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~~,~~ shall have one year from the date payment is due to return the defendant to custody as defined by paragraph 3 of subsection C of this section. In the event the defendant is returned to custody and all expenses for the defendant's return have been paid by the bondsman or insurer, the bondsman's or insurer's property shall be returned; provided, the request for remitter be made by motion filed within one year from the date payment is due.

3. If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day 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.

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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

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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 the defendant's death or 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 deceased or 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

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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 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, except that the court may award a reasonable attorney fee in favor of the prevailing party for legal services in any civil action or proceeding to collect upon a judgment of forfeiture.

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 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.

I. Upon a motion to the court, any person executing a bail bond as principal or as surety shall be exonerated after three (3) years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the

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forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney.

SECTION 2. This act shall become effective November 1, 2008.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY, dated 03-27-08 - DO PASS, As Coauthored.

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