

SB 1797

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THE STATE SENATE
Thursday, February 21, 2008

Senate Bill No. 1797
As Amended

SENATE BILL NO. 1797 - By: CRAIN of the Senate and TERRILL 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

1 forfeiture on file; provided, the clerk shall not be required to
2 mail the order and judgment of forfeiture to the bondsman or insurer
3 if, within fifteen (15) days from the date of forfeiture, the
4 defendant is returned to custody, the bond is reinstated by the
5 court with the bondsman's approval, or the order of forfeiture is
6 vacated or set aside by the court. Failure of the clerk of the
7 trial court to comply with the thirty-day notice provision in this
8 subsection shall exonerate the bond by operation of law.

9 B. The order and judgment of forfeiture shall be on forms
10 prescribed by the Administrative Director of the Courts.

11 C. 1. The bail bondsman shall have ninety (90) days from
12 receipt of the order and judgment of forfeiture from the court clerk
13 or mailing of the notice if no receipt is made, to return the
14 defendant to custody.

15 2. When the court record indicates that the defendant is
16 returned to custody in the jurisdiction where forfeiture occurred,
17 within the ninety-day period, the court clerk shall enter minutes
18 vacating the forfeiture and exonerating the bond. If the defendant
19 has been timely returned to custody, but this fact is not reflected
20 by the court record, the court shall vacate the forfeiture and
21 exonerate the bond.

22 3. For the purposes of this section, "return to custody" ~~shall~~
23 ~~mean~~ means:

- 1 a. the return of the defendant to the appropriate
2 Oklahoma law enforcement agency by the bondsman,
3 b. an appearance of the defendant in open court in the
4 court where charged,
5 c. arrest or incarceration within this state of the
6 defendant by law enforcement personnel, or
7 d. arrest or incarceration of the defendant in any other
8 jurisdiction, provided, the bondsman has requested
9 that a hold be placed on the defendant in the
10 jurisdiction wherein the forfeiture lies, and has
11 guaranteed reasonable travel expenses for the return
12 of the defendant.

13 4. In addition to the provisions set forth in paragraphs 2 and
14 3 of this subsection, the bond shall be exonerated by operation of
15 law in any case in which:

- 16 a. the bondsman has requested in writing of the sheriff's
17 department in the county where the forfeiture occurred
18 that the defendant be entered into the computerized
19 records of the National Crime Information Center, and
20 ~~b.~~ the request has not been honored within fourteen (14)
21 business days of the receipt of the written request by
22 the department, or

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

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

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

10 D. 1. If, within ninety (90) days from receipt of the order
11 and judgment of forfeiture from the court clerk, or mailing of the
12 notice if no receipt is made, the defendant is not returned to
13 custody, or the forfeiture has not been stayed, the bondsman and, if
14 applicable, the insurer whose risk it is, shall deposit cash or
15 other valuable securities in the face amount of the bond with the
16 court clerk ninety-one (91) days from receipt of the order and
17 judgment of forfeiture from the court clerk, or mailing of the
18 notice if no receipt is made; provided, this provision shall not
19 apply if the defendant has been returned to custody within the
20 ninety-day period and the court has failed to vacate the forfeiture
21 pursuant to paragraphs 2 through 5 of subsection C of this section.

22 2. After the order and judgment has been paid, the bondsman
23 and, if applicable, the insurer, whose risk it is, shall have one

1 year from the date payment is due to return the defendant to custody
2 as defined by paragraph 3 of subsection C of this section. In the
3 event the defendant is returned to custody and all expenses for the
4 defendant's return have been paid by the bondsman or insurer, the
5 bondsman's or insurer's property shall be returned; provided, the
6 request for remitter be made by motion filed within one year from
7 the date payment is due.

8 3. If the additional cash or securities are not deposited with
9 the court clerk on or before the ninety-first day after the date of
10 service of the order and judgment of forfeiture from the court
11 clerk, or mailing of the notice if no receipt is made, then the
12 court clerk shall notify the Insurance Commissioner by sending a
13 certified copy of the order and judgment of forfeiture and proof
14 that the bondsman and, if applicable, the insurer have been notified
15 by mail with return receipt requested.

16 4. The Insurance Commissioner shall:

17 a. in the case of a surety bondsman, immediately cancel
18 the license privilege and authorization of the insurer
19 to do business within the State of Oklahoma and cancel
20 the appointment of all surety bondsman agents of the
21 insurer who are licensed by Section 1301 et seq. of
22 this title, and

1 b. in the case of a professional bondsman, withdraw the
2 face amount of the ~~said~~ forfeiture from the deposit
3 provided in Section 1306 of this title. The
4 Commissioner shall then immediately direct the
5 professional bondsman, by mail with return receipt
6 requested, to make additional deposits to bring the
7 original deposit to the required level. Should the
8 professional bondsman, after being notified, fail to
9 make an additional deposit within ten (10) days from
10 the receipt of notice, or mailing of notice if no
11 receipt is made, the license shall be revoked and all
12 sums presently on deposit shall be held by the
13 Commissioner to secure the face amounts of bonds
14 outstanding. Upon release of the bonds, any amount of
15 deposit in excess of the bonds shall be returned to
16 the bondsman; provided, the bail bondsman shall have
17 had notice as required by the court, at the place of
18 the bondsman's business, of the trial or hearing of
19 the defendant named in the bond. The notice shall
20 have been at least ten (10) days before the required
21 appearance of the defendant, unless the appearance is
22 scheduled at the time of execution of the bond.
23 Notwithstanding the foregoing, the bondsman shall be

1 deemed to have had notice of the trial or hearing if
2 the defendant named in the bond shall have been
3 recognized back in open court to appear at a date
4 certain for the trial or hearing.

5 5. If the actions of any bail bondsman force the Insurance
6 Commissioner to withdraw monies, deposited pursuant to Section 1306
7 of this title, to pay past due executions more than two (2) times in
8 a consecutive twelve-month period, then the license of the
9 professional bondsman shall, in addition to other penalties, be
10 suspended automatically for one (1) year or until a deposit equal to
11 all outstanding forfeitures due is made. The deposit shall be
12 maintained until the Commissioner deems it feasible to reduce the
13 deposit. In no case shall an increased deposit exceed two (2) years
14 unless there is a recurrence of withdrawals as stated herein.

15 E. 1. If the defendant's failure to appear was the result of
16 the defendant's death or of being in the custody of a court other
17 than the court in which the appearance was scheduled, forfeiture
18 shall not lie. Upon proof to the court that the bondsman paid the
19 order and judgment of forfeiture without knowledge that the
20 defendant was deceased or in custody of another court on the day the
21 defendant was due to appear, and all expenses for the defendant's
22 return have been paid by the bondsman, the bondsman's property shall
23 be returned.

1 2. Where the defendant is in the custody of another court, the
2 district attorney or municipal attorney shall direct a hold order to
3 the official, judge, court or law enforcement agent wherein the
4 defendant is in custody; provided, that all expenses accrued as a
5 result of returning the custody of the defendant shall be borne by
6 the bondsman.

7 F. The district attorney or municipal attorney shall not
8 receive any bonuses or other monies or property for or by reason of
9 services or actions in connection with or collection of bond
10 forfeitures under the provisions of Section 1301 et seq. of this
11 title, except that the court may award a reasonable attorney fee in
12 favor of the prevailing party for legal services in any civil action
13 or proceeding to collect upon a judgment of forfeiture.

14 G. The above procedures shall be subject to the bondsman's
15 rights of appeal. The bondsman or insurer may appeal an order and
16 judgment of forfeiture pursuant to the procedures for appeal set
17 forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes.
18 To stay the execution of the order and judgment of forfeiture, the
19 bondsman or insurer shall comply with the provisions set forth in
20 Section 990.4 of Title 12 of the Oklahoma Statutes.

21 H. For municipal courts of record, the above procedures are
22 criminal in nature and ancillary to the criminal procedures before
23 the trial court and shall be subject to the bondsman's right of

1 appeal. The bondsman or insurer may appeal an order and judgment of
2 forfeiture by the municipal courts of record to the Court of
3 Criminal Appeals.

4 I. Upon a motion to the court, any person executing a bail bond
5 as principal or as surety shall be exonerated after three (3) years
6 have elapsed from the posting of the bond, unless a judgment has
7 been entered against the surety or the principal for the forfeiture
8 of the bond, or unless the court grants an extension of the three-
9 year time period for good cause shown, upon motion by the
10 prosecuting attorney.

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

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-12-08 - DO
13 PASS, As Amended and Coauthored.