STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2928 By: Kirby of the House

and

Sparks of the Senate

COMMITTEE SUBSTITUTE

An Act relating to bail bondsmen; amending 59 O.S. 2011, Sections 1309, as last amended by Section 3, Chapter 150, O.S.L. 2013, 1316, as amended by Section 6, Chapter 150, O.S.L. 2013, 1317, as amended by Section 7, Chapter 150, O.S.L. 2013, 1320, as amended by Section 8, Chapter 150, O.S.L. 2013, 1332, as last amended by Section 26, Chapter 407, O.S.L. 2013 (59 O.S. Supp. 2013, Sections 1309, 1316, 1317, 1320 and 1332), which relate to licensure of bail bondsmen; modifying date of the annual financial statement; modifying requirement for content of receipt; modifying contents of affidavit; requiring law enforcement to provide list of bondsmen upon request; requiring certain bail bondsmen to be removed from list; modifying definition; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1309, as last amended by Section 3, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, Section 1309), is amended to read as follows:

Section 1309. A. A renewal license shall be issued by the Insurance Commissioner to a licensee who has continuously maintained same in effect, without further examination, upon payment of a renewal fee of Two Hundred Dollars ($200.00) for a bail bondsman and proof of completion of sixteen (16) hours of continuing education as required by Section 1308.1 of this title. The renewal fee for licenses expiring September 15, 2012, shall be prorated to the birth month of the bondsman. Thereafter the renewal fee shall be submitted biennially by the last day of the birth month of the bondsman. Such licensee shall in all other respects be required to comply with and be subject to the provisions of Section 1301 et seq. of this title.

B. An individual holding a professional bondsman license shall also provide an annual financial statement prepared by an accounting firm or individual holding a permit to practice public accounting in this state in accordance with generally accepted principles of accounting procedures showing assets, liabilities, and net worth, the annual statement to be as of a date not earlier than ~~ninety (90) days prior to September 30~~ June 30. The statements shall be attested to by an unqualified opinion of the accounting firm or individual holding a permit to practice public accounting in this state that prepared the statement or statements. The statement shall be submitted annually by the last day of September.

C. An individual holding a property bondsman license shall also provide an annual county assessor's written statement stating the property's assessed value for each property used to post bonds and a written statement from any lien holder stating the current payoff amount on each lien for each property used to post bonds. The written statements shall be submitted annually by the last day of September.

D. If the license is not renewed or the renewal fee is not paid by the last day of the birth month of the bondsman, the license shall expire automatically pursuant to Section 1304 of this title. After expiration, the license may be reinstated for up to one (1) year following the expiration date. If after the one-year date the license has not been reinstated, the licensee shall be required to apply for a license as a new applicant.

E. Reinstatement fees shall be double the original fee.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1316, as amended by Section 6, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, Section 1316), is amended to read as follows:

Section 1316. A. 1. A bail bondsman shall neither sign nor countersign in blank any bond, nor shall the bondsman give a power of attorney to, or otherwise authorize, anyone to countersign the name of the bail bondsman to bonds unless the person so authorized is a licensed surety bondsman or managing general agent appointed by a licensed professional bondsman giving the power of attorney. The

professional bondsman shall submit to the Insurance Commissioner the agreement between the professional bondsman and the appointed bondsman. The agreement shall be submitted to the Commissioner prior to the appointed bondsman writing bonds on behalf of the professional. The professional bondsman shall notify the Commissioner whenever any appointment is canceled. If the bondsman surrenders the professional qualification, or the professional qualification is suspended or revoked, or if an insurer authorized to write bail bond business surrenders their bail surety line of authority, or this line of authority is suspended or revoked, then the Commissioner shall suspend the appointment of all of the bail agents of the professional bondsman or insurer. The Commissioner shall immediately notify any bail agent whose license is affected and the court clerk of the agent's resident county upon the suspension or revocation of the qualification of the professional bondsman. If the professional qualification or the bail surety line of authority is reinstated within twenty-four (24) hours, the Commissioner shall not be required to suspend the bail agent appointments. If the Commissioner reinstates the professional qualification within twenty-four (24) hours, the Commissioner shall also reinstate the appointment of the bail agents of the professional bondsman or bail insurer. If more than twenty-four (24) hours elapse following the suspension or revocation, then the

professional bondsman or insurer shall submit new agent appointments to the Commissioner.

2. Bail bondsmen shall not allow other licensed bondsmen to present bonds that have previously been signed and completed. The bail bondsman that presents the bond shall sign the form in the presence of the official that receives the bond.

B. Premium charged shall be indicated on the appearance bond prior to the filing of the bond.

C. 1. At the time of payment, a bail bondsman shall provide the indemnitors with a proper receipt ~~which shall include fees, premium or other payments and copies of any agreements executed relating to the appearance bond~~.

2. Any receipt provided by a bondsman shall be individually numbered and include:

a. the precise amount of the fees, premium, collateral, or other payments received by the bondsman,

b. copies of any agreements executed relating to the appearance bond,

c. the full name of the defendant,

d. the defendant's case number if it is available, and

e. full name of the individual(s) presenting the payment.

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

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

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1317, as amended by Section 7, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, Section 1317), is amended to read as follows:

Section 1317. A. Every surety or professional bondsman who appoints a surety bondsman or managing general agent in the state, shall give notice thereof to the Insurance Commissioner. The filing fee for appointment of each surety bondsman or managing general agent shall be Ten Dollars ($10.00), payable to the Commissioner and shall be submitted with the appointment. The appointment shall remain in effect until the surety or professional bondsman submits a notice of cancellation to the Commissioner, the license of the bail bondsman expires, or the Commissioner cancels the appointment. The Commissioner may cancel a bail surety appointment if the license of the bondsman is suspended, revoked or nonrenewed. 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. The notice filed with the Commissioner shall state the reasons, if any, for 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 forfeitures are owed to any court, no fines or fees are owed to the insurance department, and no premiums or indemnification for forfeitures or fines are owed to any insurer, insureds, or others received in the conduct of business under the license. If any statement made on the affidavit is found by the Commissioner to be false, the Commissioner may deny the new surety appointment ~~or~~, apply the sanctions set forth in Section 1310 of this title or both. This provision shall not require that all outstanding liabilities have been exonerated, but may provide that 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 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 4. AMENDATORY 59 O.S. 2011, Section 1320, as amended by Section 8, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, Section 1320), is amended to read as follows:

Section 1320. A. No bail bondsman shall become a surety on an undertaking unless he has first registered his 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 license, he shall provide the court clerk with proof that he is a resident of said county or that he offices in said county. The court clerk of the county shall provide a list of bondsmen permitted to write bail in that county to the judges and law enforcement offices of that county. Law enforcement shall provide the list to any incarcerated individual upon request. The list shall consist of professional, property, cash and surety bail bondsmen. ~~Only surety bail bondsmen with a current surety appointment shall be on the list~~ Any surety bondsman without a current surety appointment shall be removed from the list. In any county not having a licensed bondsman authorized to do business within said county, the court having jurisdiction shall allow and fix bail.

A surety bondsman shall also file a certified copy of his appointment by power of attorney from the insurer which he represents as agent with each of said officers. A fee of Twenty Dollars ($20.00) shall be paid to the district court clerk for each county in which the bail bondsman registers his license. The fee shall be payable biennially 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 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 license. 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 county. The bondsman shall advise the court clerk of each such county in writing of his intention to write bonds in the county and shall file a certified copy of his license with and pay a fee of Ten Dollars ($10.00) to each such court clerk.

SECTION 5. AMENDATORY 59 O.S. 2011, Section 1332, as last amended by Section 26, Chapter 407, O.S.L. 2013 (59 O.S. Supp. 2013, 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 order and judgment of forfeiture is filed in the court, 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. The bondsman may contract with a licensed bail enforcer pursuant to the Bail Enforcement and Licensing Act to recover and return the defendant to custody within the ninety-day period, or as agreed.

3. 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.

4. For the purposes of this section, "return to custody" means:

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, 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, 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.

5. In addition to the provisions set forth in paragraphs 3 and 4 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 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.

6. 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.

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 3 through 6 of subsection C of this section.

2. After the order and judgment has been paid within 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, as required in paragraph 1 of this subsection, 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 4 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 (1) 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.

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 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 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 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 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 6. This act shall become effective November 1, 2014.

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