OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 18, 2015

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 587

By: Shortey of the Senate and Montgomery of the House

Title: Bail Enforcement and Licensing Act; apprehension of persons; modifying exceptions. Effective date.

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together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:

Shortey

Yen

Newberry

Sparks

Dahm

Wyrick

Halligan

HOUSE CONFEREES:

Conference Committee on Insurance

Senate Action_____Date_____ House Action_____Date_____

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 587 By: Shortey of the Senate

and

Montgomery of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Bail Enforcement and Licensing Act; amending 59 O.S. 2011, Sections 1303, as amended by Section 407, Chapter 22, O.S.L. 2013, 1311.3, as amended by Section 1, Chapter 373, O.S.L. 2014, Section 13, Chapter 373, O.S.L. 2014, 1327, as amended by Section 23, Chapter 407, O.S.L. 2013, 1350.6, as amended by Section 7, Chapter 407, O.S.L. 2013, 1350.9, as amended by Section 5, Chapter 373, O.S.L. 2014 (59 O.S. Supp. 2014, Sections 1303, 1311.3, 1311.4, 1327, 1350.6, and 1350.9), which relate to licenses required, unlawful acts, assisting other bondsmen, surrender of defendant, prohibition to breaking and entering, and qualifications for licensure; updating references; modifying certain exceptions; stating penalty for certain violation; prohibiting use of unlicensed persons; stating penalty; making language gender neutral; exonerating bond under certain conditions; expanding authority to break and enter dwelling under certain conditions; providing for out-of-state licensure; authorizing residency waiver; providing for certain rules; providing for disciplinary action for violations; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1303, as amended by Section 407, Chapter 22, O.S.L. 2013 (59 O.S. Supp. 2014, Section 1303), is amended to read as follows:

Section 1303. A. No person shall act in the capacity of a bail bondsman or perform any of the functions, duties or powers prescribed for bail bondsmen under the provisions of Section 1301 et seq. of this title, unless that person shall be qualified and licensed as provided in Section 1301 et seq. of this title or as authorized pursuant to the Bail Enforcement and Licensing Act. Provided, however, none of the provisions or terms of this section shall prohibit any individual or individuals from:

1. Pledging real or other property as security for a bail bond for himself, herself or another in judicial proceedings who does not receive, or is not promised, a fee or charge for his or her services provided such person shall not be permitted to make in excess of ten bonds per year; or

2. Executing any bail bond for an insurer, pursuant to a bail bond service agreement entered into between such insurer and any automobile club or association, financing institution, insurance company or other organization or association, on behalf of a person required to furnish bail in connection with any violation of law arising out of the use of a motor vehicle.

B. No <u>bail bondsman</u> license shall be issued except in compliance with Section 1301 et seq. of this title and none shall be

issued except to an individual. License renewals shall be granted subject to all other provisions of Section 1301 et seq. of this title.

A corporation as such shall not be licensed. Nothing herein contained shall be construed as repealing Section 11 of Title 5 of the Oklahoma Statutes; and it is further provided that licensed attorneys are prohibited from signing any bonds as surety in any civil or criminal action pending or about to be filed in any court of this state.

C. Any person violating the provisions of subsection A of this section shall be guilty of a felony and shall be punished by a fine in an amount not exceeding Five Thousand Dollars ($5,000.00), upon conviction.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1311.3, as amended by Section 1, Chapter 373, O.S.L. 2014 (59 O.S. Supp. 2014, Section 1311.3), is amended to read as follows:

Section 1311.3. A. It shall be unlawful for any person whose license to act as a bail bondsman has been suspended, revoked, surrendered~~,~~ or refused, to do or perform any of the acts of a bail bondsman. Any person convicted of violating the provisions of this subsection shall be guilty of a felony and shall be punished by a fine in an amount not exceeding Five Thousand Dollars ($5,000.00).

B. It shall be unlawful for any bail bondsman to assist, aid, or conspire with a person whose license as a bail bondsman has been

suspended, revoked, surrendered~~,~~ or refused, to engage in any acts as a bail bondsman. Any person convicted of violating the provisions of this subsection shall be guilty of a felony and shall be punished by a fine in an amount not to exceed Five Thousand Dollars ($5,000.00).

C. It shall be unlawful for any licensed bail bondsman to employ, seek assistance from or conspire with an unlicensed person or a person whose license as a bail enforcer has been suspended, revoked, surrendered or refused, to engage in any acts as a bail enforcer or bail bondsman. Any person convicted of violating the provisions of this subsection shall be guilty of a felony and shall be punished by a fine in an amount not to exceed Five Thousand Dollars ($5,000.00).

D. The provisions of this section shall not apply to a person who within ninety (90) days of the date their bail bondsman license is suspended or revoked in this state contracts with a licensed bail enforcer pursuant to the Bail Enforcement and Licensing Act to cause the apprehension and surrender of his or her defendant clients to the appropriate authority. The defendant client must have a current undertaking or bail contract with the person whose bail bondsman license is suspended or revoked and such undertaking or bail contract must have been made in this state by the person whose license is now suspended or revoked. No acts other than contracting with a licensed bail enforcer to surrender a defendant client to the

appropriate authority shall be authorized or recognized after a bail bondsman license is suspended or revoked.

SECTION 3. AMENDATORY Section 13, Chapter 373, O.S.L. 2014 (59 O.S. Supp. 2014, Section 1311.4), is amended to read as follows:

Section 1311.4 Notwithstanding any provision of the Bail Enforcement and Licensing Act to the contrary, a licensed ~~bondman~~ bondsman in this state may seek assistance from, or provide assistance to, another licensed bondsman in this state or another state for purposes of apprehension and surrender of ~~their~~ his or her defendant client whose undertaking or bail contract was written by the licensed bondsman or a bondsman appointed by an insurer doing business in this state; provided, the licensed bondsmen have a continuously valid ~~licensed~~ license for five (5) or more years beginning the effective date of this act. The bondsman licensed in this state shall be required to obtain and maintain proof of the other bondsman's valid license and license duration requirement prior to permitting such person to engage in any act requiring a license in this state.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1327, as amended by Section 23, Chapter 407, O.S.L. 2013 (59 O.S. Supp. 2014, Section 1327), is amended to read as follows:

Section 1327. A. At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or

bondsman or a licensed bail enforcer pursuant to a client contract authorized by the Bail Enforcement and Licensing Act may surrender the defendant, or the defendant may surrender himself or herself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he or she been committed. The defendant may be surrendered without the return of premium for the bond if he or she has been guilty of nonpayment of premium, changes address without notifying his or her bondsman, conceals himself or herself, leaves the jurisdiction of the court without the permission of his or her bondsman, or violates his or her contract with the bondsman in any way that does harm to the bondsman, or the surety, or violates his or her obligation to the court. When a bondsman or surety, or a licensed bail enforcer, surrenders a defendant pursuant to this subsection, the bondsman or surety shall file written notification of the surrender. After surrender, and upon filing of written notification of the surrender, the bond shall be exonerated and the clerk shall enter a minute in the case exonerating the bond.

B. If the defendant has been placed in custody of another jurisdiction, the district attorney shall direct a hold order to the official, judge or law enforcement agency where the defendant is in custody. All reasonable expenses accrued in returning the defendant to the original court shall be borne by the bondsman who posted the bond with that court. Upon application, the bond in the original

court shall be exonerated when the hold order is placed and upon proof of payment of expenses by the bondsman.

C. If the defendant has been arrested on new charges and is in the custody of the same jurisdiction in which the bondsman or surety has posted an appearance bond or bonds for the defendant, and the bond or bonds have not been exonerated, and certified copies of bonds are not reasonably available, the bondsman or surety may recommit the defendant to be held in custody on the charges for which the bondsman or surety has previously posted appearance bonds thereon, in accordance with the following procedure:

1. On a Recommitment of Defendant by Bondsman form approved by the Administrative Office of the Courts, the bondsman or surety shall personally affix his or her signature to an affidavit attesting to the following:

a. the defendant is presently in the custody of the jurisdiction in which the bondsman or surety has posted a bond or bonds,

b. the case number, if any, assigned to each bond,

c. that the bond or bonds have not been exonerated, and

d. the specific charges and bond amount or amounts;

2. The bondsman or surety shall present the Recommitment of Defendant by Bondsman form to the official in whose custody the defendant is being held, and the official shall detain the defendant

in his or her custody, thereon, as upon a commitment, and by a certificate in writing acknowledging the surrender; and

3. When a bondsman or surety recommits a defendant pursuant to this subsection, the bondsman or surety shall file a written notification thereof to the court, and after such notification, the bond or bonds shall be exonerated, and the clerk shall enter a minute in the case exonerating the bond or bonds.

D. When a defendant does appear before the court as required by law and enters a plea of guilty or nolo contendere, is sentenced or a deferred sentence is granted as provided for in Section 991c of Title 22 of the Oklahoma Statutes, <u>or deferred prosecution is granted as provided by law,</u> in such event the undertaking and bondsman and insurer shall be exonerated from further liability.

SECTION 5. AMENDATORY 59 O.S. 2011, Section 1350.6, as amended by Section 7, Chapter 407, O.S.L. 2013 (59 O.S. Supp. 2014, Section 1350.6), is amended to read as follows:

Section 1350.6. A. Notwithstanding any other provision of law, it shall be unlawful for a bail enforcer to break into and enter the dwelling house of any defendant or third-party for purposes of recovery or attempted recovery of a defendant either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter;

2. By breaking in any other manner, being armed with a weapon or being assisted or aided by one or more persons then actually present; or

3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window.

B. A person violating the provisions of this section shall be guilty of burglary in the first degree and, upon conviction, punished as provided in Section 1436 of Title 21 of the Oklahoma Statutes. Provided, however, the offense and penalty stated in this section shall not apply to a licensed bail enforcer during an active attempt at recovery of a felony defendant <u>and may not apply to a licensed bail enforcer during an active attempt at recovery of a misdemeanor defendant</u> under the following conditions:

a. the bail enforcer has first-hand or eyes-on knowledge that the defendant entered the dwelling house during an attempt to recover the defendant and the defendant after reasonable request is refusing to surrender,

b. the bail enforcer has first-hand or eyes-on knowledge that the defendant is actually within the dwelling house and after reasonable request is refusing to surrender, or

c. the bail enforcer has obtained knowledge confirming beyond a reasonable doubt that the defendant is

actually within the dwelling house and after reasonable request refuses to surrender; and

d. if the defendant is subject to a misdemeanor offense, the defendant has been subject to a prior arrest and release on a bail undertaking which terms or conditions have been breached.

For purposes of this subsection, "first-hand knowledge" means information received from direct eye-witness testimony, actual visual contact with and confirmed identification of the defendant by a person who knows the defendant or resides at the dwelling house, or other factual evidence provided directly to the licensed bail enforcer that confirms the identity and presence of the defendant within the dwelling house.

The exceptions to the offense and penalty in this section shall not limit or restrict another person within or without the dwelling house, or owning the dwelling house, from taking any action in response to or to defend a forced entry into such dwelling house, including use of a firearm as may be authorized by law. The use of an exception provided in this subsection by a licensed bail enforcer shall be a fact to be determined by the district attorney in considering whether to prosecute an offense under this section. Any person exercising his or her right to respond or protect the dwelling house or its occupants shall not be liable for injury to another who was forcing entry into such dwelling house. An owner or

occupant of a dwelling house may seek damages to his or her property in a civil action if such damage resulted from a forced entry by a licensed bail enforcer.

SECTION 6. AMENDATORY 59 O.S. 2011, Section 1350.9, as amended by Section 5, Chapter 373, O.S.L. 2014 (59 O.S. Supp. 2014, Section 1350.9), is amended to read as follows:

Section 1350.9. A. Except as prohibited by Section ~~4~~ 1350.3 this ~~act~~ title, a bail enforcer license or an armed bail enforcer license may be issued to an applicant meeting the following qualifications. The applicant shall:

1. Be a citizen of the United States or an alien legally residing in the United States and have a minimum of six (6) ~~months~~ months' legal residence documented in this state or be a citizen of the United States or an alien legally residing in the United States and have a minimum of five (5) years' legal residence documented in another state and approved for a residency waiver by CLEET as authorized by subsection E of this section;

2. Be at least twenty-one (21) years of age;

3. Have a high school diploma or GED, or offer proof sufficient to CLEET of equivalent GED qualifications, and have successfully completed the training and psychological evaluation requirements for the license applied for, as prescribed by the Council on Law Enforcement Education and Training;

4. Be of good moral character;

5. Have no final victim protection orders issued in any state as a defendant;

6. Have no record of a felony conviction or any expungement or a deferred judgment or suspended sentence for a felony offense, unless at least fifteen (15) years has passed since the completion of the sentence and no other convictions have occurred or are pending. Provided, no person convicted of a felony offense shall be eligible for an armed bail enforcer license;

7. Have no record of conviction for assault or battery, aggravated assault or battery, larceny, theft, false pretense, fraud, embezzlement, false personation of an officer, any offense involving moral turpitude, any offense involving a minor as a victim, any nonconsensual sex offense, any offense involving the possession, use, distribution, or sale of a controlled dangerous substance, any offense of driving while intoxicated or driving under the influence of intoxicating substance, any offense involving a firearm, or any other offense as prescribed by the Council.

a. If any conviction which disqualifies an applicant occurred more than five (5) years prior to the application date and the Council is convinced the offense constituted an isolated incident and the applicant has been rehabilitated, the Council may, in its discretion, waive the conviction disqualification as provided for in this paragraph and issue an unarmed

bail enforcer license, but shall not issue an armed bail enforcer license if the offense involved the use of a firearm, was violent in nature, or was a felony offense other than a driving offense.

b. Under oath, the applicant shall certify that he or she has no disqualifying convictions as specified in the Bail Enforcement and Licensing Act or by rule of the Council, or that more than five (5) years have lapsed since the completion of the sentence for a disqualifying conviction.

c. The applicant shall further meet all other qualifications, including, but not limited to, the requirement to provide CLEET and the Oklahoma State Bureau of Investigation with individual fingerprints for a state and national criminal history records search and a current individual photograph with the completed CLEET application for a bail enforcer license.

d. If upon completion of the required background investigation it is discovered that a disqualifying conviction exists, the Council shall immediately revoke or deny the bail enforcer license of the applicant;

8. Make a statement that the applicant is not currently undergoing treatment for a mental illness, condition, or disorder, make a statement whether the applicant has ever been adjudicated incompetent or committed to a mental institution, and make a statement regarding any history of illegal drug use or alcohol abuse. Upon presentation by the Council of the name, gender, date of birth, and address of the applicant to the Department of Mental Health and Substance Abuse Services, the Department of Mental Health and Substance Abuse Services shall notify the Council within ten (10) days whether the computerized records of the Department indicate the applicant has ever been involuntarily committed to an Oklahoma state mental institution. For purposes of this subsection, "currently undergoing treatment for a mental illness, condition, or disorder" means the person has been diagnosed by a licensed physician or psychologist as being afflicted with a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and such condition continues to exist;

9. Make a statement regarding any misdemeanor domestic violence charges;

10. Provide proof of liability insurance or an individual bond in a minimum amount established by the Bail Enforcement and Licensing Act; and

11. Provide a statement of self-employment as a sole proprietor bail enforcer.

B. 1. A bail enforcer shall be required to maintain a physical address and phone number publically available and published in the city or county where the physical address is located. Only a licensed bail enforcer may accept a client contract to perform the services of a bail enforcer.

2. A licensed bail enforcer shall be required to maintain complete records of all clients, defendants, and apprehensions, and agree such records shall be available to CLEET for inspection at any time during regular business hours.

C. 1. All bail enforcers shall obtain and maintain either a liability insurance policy or a surety bond that allows persons to recover for actionable injuries, loss, or damage as a result of the willful, or wrongful acts or omissions of the licensee and protects this state, its agents, officers, and employees from judgments against the licensee, and is further conditioned upon the faithful and honest conduct of the licensee.

2. The liability insurance policy or surety bond required in this subsection shall be in the minimum amount of Ten Thousand Dollars ($10,000.00).

3. Liability insurance policies or bonds issued pursuant to this subsection shall not be modified or canceled unless ten (10) days' prior written notice is given to the Council. All persons

insured or bonded pursuant to this subsection shall be insured by an insurance carrier or bonded by a surety company licensed and authorized to do business in the state. Failure to obtain and maintain sufficient liability insurance or bond as provided in the Bail Enforcement and Licensing Act shall be grounds for revocation of a license.

D. Upon written notice, any license may be placed on inactive status.

E. A person who is a citizen of the United States or an alien legally residing in the United States, who has a minimum of five years' legal residence documented in another state, may seek a residency waiver from CLEET to obtain a license as a bail enforcer in this state upon proper application and documentation; provided, the person meets all other requirements for a bail enforcer in this state. The Council on Law Enforcement Education and Training shall promulgate rules governing residency waivers for licensure in this state. The rules shall require reasonable and sufficient grounds for licensure in this state and may include, but are not limited to, authorizing a licensed bail bondsman from an adjoining state jurisdiction to be licensed in this state as a bail enforcer, authorizing a person from another state to be a licensed bail enforcer in this state when such license would, in the sole discretion of CLEET, be reasonable under the circumstances, determining whether or not persons granted a residency waiver may be

licensed in this state as armed bail enforcers, and determining whether or not out-of-state licensees shall be subject to any special duties, protocols or conditions. The Council of Law Enforcement Education and Training shall have absolute discretion to grant, deny, suspend or revoke any out-of-state application, license or residency waiver at any time. Any violation of the Bail Enforcement and Licensing Act or any rules promulgated pursuant thereto shall require prompt disciplinary action by CLEET against the out-of-state person, applicant or licensee.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

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