

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 ENGROSSED SENATE

5 BILL NO. 586

By: Shortey of the Senate

and

Leewright of the House

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9 An Act relating to bail bondsmen; amending 59 O.S.
10 2011, Section 1332, as last amended by Section 5,
11 Chapter 385, O.S.L. 2014 (59 O.S. Supp. 2014, Section
12 1332), which relates to forfeiture procedure;
13 providing certain exception to the Bail Enforcement
14 and Licensing Act; authorizing bail bondsmen
15 appointed by the same insurer to assist each other in
16 apprehending a defendant for purpose of surrender;
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1332, as
20 last amended by Section 5, Chapter 385, O.S.L. 2014 (59 O.S. Supp.
21 2014, Section 1332), is amended to read as follows:

22 Section 1332. A. If there is a breach of an undertaking, the
23 court before which the cause is pending shall issue, within ten (10)
24 days, an arrest warrant for the defendant and declare the
25 undertaking and any money, property, or securities that have been
26 deposited as bail, forfeited on the day the defendant failed to

1 appear. Within fifteen (15) days from the date of the forfeiture,
2 the order and judgment of forfeiture shall be filed with the clerk
3 of the trial court. Failure to timely issue the arrest warrant or
4 file the order and judgment of forfeiture as provided in this
5 subsection shall exonerate the bond by operation of law. In the
6 event of the forfeiture of a bail bond the clerk of the trial court
7 shall, within thirty (30) days after the order and judgment of
8 forfeiture is filed in the court, by mail with return receipt
9 requested, mail a true and correct copy of the order and judgment of
10 forfeiture to the bondsman, and if applicable, the insurer, whose
11 risk it is, and keep at least one copy of the order and judgment of
12 forfeiture on file; provided, the clerk shall not be required to
13 mail the order and judgment of forfeiture to the bondsman or insurer
14 if, within fifteen (15) days from the date of forfeiture, the
15 defendant is returned to custody, the bond is reinstated by the
16 court with the bondsman's approval, or the order of forfeiture is
17 vacated or set aside by the court. Failure of the clerk of the
18 trial court to comply with the thirty-day notice provision in this
19 subsection shall exonerate the bond by operation of law.

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

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

3 2. The bondsman may contract with a licensed bail enforcer
4 pursuant to the Bail Enforcement and Licensing Act to recover and
5 return the defendant to custody within the ninety-day period, or as
6 agreed, or notwithstanding the Bail Enforcement and Licensing Act if
7 the bondsman is duly appointed in this state by an insurer operating
8 in this state, the bondsman may seek the assistance of another
9 licensed bondsman in this state who is appointed by the same
10 insurer.

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

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

- 19 a. the return of the defendant to the appropriate
20 Oklahoma law enforcement agency by the bondsman,
- 21 b. an appearance of the defendant in open court in the
22 court where charged,
- 23 c. arrest or incarceration within this state of the
24 defendant by law enforcement personnel, provided the

1 bondsman has requested that a hold be placed on the
2 defendant in the jurisdiction wherein the forfeiture
3 lies and has guaranteed reasonable travel expenses for
4 the return of the defendant, or

- 5 d. arrest or incarceration of the defendant in any other
6 jurisdiction, provided the bondsman has requested that
7 a hold be placed on the defendant in the jurisdiction
8 wherein the forfeiture lies and has guaranteed
9 reasonable travel expenses for the return of the
10 defendant.

11 5. In addition to the provisions set forth in paragraphs 3 and
12 4 of this subsection, the bond shall be exonerated by operation of
13 law in any case in which:

- 14 a. the bondsman has requested in writing of the sheriff's
15 department in the county where the forfeiture occurred
16 that the defendant be entered into the computerized
17 records of the National Crime Information Center, and
18 the request has not been honored within fourteen (14)
19 business days of the receipt of the written request by
20 the department, or
21 b. the defendant has been arrested outside of this state
22 and the court record shows the prosecuting attorney
23 has declined to proceed with extradition.
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1 6. The court may, in its discretion, vacate the order of
2 forfeiture and exonerate the bond where good cause has been shown
3 for:

- 4 a. the defendant's failure to appear, or
- 5 b. the bondsman's failure to return the defendant to
6 custody within ninety (90) days.

7 D. 1. If, within ninety (90) days from receipt of the order
8 and judgment of forfeiture from the court clerk, or mailing of the
9 notice if no receipt is made, the defendant is not returned to
10 custody, or the forfeiture has not been stayed, the bondsman and, if
11 applicable, the insurer whose risk it is shall deposit cash or other
12 valuable securities in the face amount of the bond with the court
13 clerk ninety-one (91) days from receipt of the order and judgment of
14 forfeiture from the court clerk, or mailing of the notice if no
15 receipt is made; provided, this provision shall not apply if the
16 defendant has been returned to custody within the ninety-day period
17 and the court has failed to vacate the forfeiture pursuant to
18 paragraphs 3 through 6 of subsection C of this section.

19 2. After the order and judgment has been paid within ninety-one
20 (91) days from receipt of the order and judgment of forfeiture from
21 the court clerk, or mailing of the notice if no receipt is made, as
22 required in paragraph 1 of this subsection, the bondsman and, if
23 applicable, the insurer whose risk it is shall have one year from
24 the date payment is due to return the defendant to custody as

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

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

15 4. The Insurance Commissioner shall:

- 16 a. in the case of a surety bondsman, immediately cancel
17 the license privilege and authorization of the insurer
18 to do business within the State of Oklahoma and cancel
19 the appointment of all surety bondsman agents of the
20 insurer who are licensed by Section 1301 et seq. of
21 this title, and
22 b. in the case of a professional bondsman, withdraw the
23 face amount of the forfeiture from the deposit
24 provided in Section 1306 of this title. The

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

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

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

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

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

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

17 H. For municipal courts of record, the above procedures are
18 criminal in nature and ancillary to the criminal procedures before
19 the trial court and shall be subject to the bondsman's right of
20 appeal. The bondsman or insurer may appeal an order and judgment of
21 forfeiture by the municipal courts of record to the Court of
22 Criminal Appeals.

23 I. Upon a motion to the court, any person executing a bail bond
24 as principal or as surety shall be exonerated after three (3) years

1 have elapsed from the posting of the bond, unless a judgment has
2 been entered against the surety or the principal for the forfeiture
3 of the bond, or unless the court grants an extension of the three-
4 year time period for good cause shown, upon motion by the
5 prosecuting attorney.

6 SECTION 2. This act shall become effective November 1, 2015.
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8 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/09/2015 - DO
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