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February 12, 2015

SENATE BILL NO. 586

By: Shorteye

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

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1332, as last amended by Section 5, Chapter 385, O.S.L. 2014 (59 O.S. Supp. 2014, 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, within ten (10) days, 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. Within fifteen (15) days from the date of the forfeiture, the order and judgment of forfeiture shall be filed with the clerk of the trial court. Failure to timely issue the arrest warrant or

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

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

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

23 2. The bondsman may contract with a licensed bail enforcer
24 pursuant to the Bail Enforcement and Licensing Act to recover and

1 return the defendant to custody within the ninety-day period, or as
2 agreed, or notwithstanding the Bail Enforcement and Licensing Act if
3 the bondsman is duly appointed in this state by an insurer operating
4 in this state, the bondsman may seek the assistance of another
5 licensed bondsman in this state who is appointed by the same
6 insurer.

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

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

- 15 a. the return of the defendant to the appropriate
16 Oklahoma law enforcement agency by the bondsman,
- 17 b. an appearance of the defendant in open court in the
18 court where charged,
- 19 c. arrest or incarceration within this state of the
20 defendant by law enforcement personnel, provided the
21 bondsman has requested that a hold be placed on the
22 defendant in the jurisdiction wherein the forfeiture
23 lies and has guaranteed reasonable travel expenses for
24 the return of the defendant, or

1 d. arrest or incarceration of the defendant in any other
2 jurisdiction, provided the bondsman has requested that
3 a hold be placed on the defendant in the jurisdiction
4 wherein the forfeiture lies and has guaranteed
5 reasonable travel expenses for the return of the
6 defendant.

7 5. In addition to the provisions set forth in paragraphs 3 and
8 4 of this subsection, the bond shall be exonerated by operation of
9 law in any case in which:

10 a. the bondsman has requested in writing of the sheriff's
11 department in the county where the forfeiture occurred
12 that the defendant be entered into the computerized
13 records of the National Crime Information Center, and
14 the request has not been honored within fourteen (14)
15 business days of the receipt of the written request by
16 the department, or

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

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

23 a. the defendant's failure to appear, or
24

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

1 request for remitter be made by motion filed within one (1) year
2 from the date payment is due.

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

11 4. The Insurance Commissioner shall:

12 a. in the case of a surety bondsman, immediately cancel
13 the license privilege and authorization of the insurer
14 to do business within the State of Oklahoma and cancel
15 the appointment of all surety bondsman agents of the
16 insurer who are licensed by Section 1301 et seq. of
17 this title, and

18 b. in the case of a professional bondsman, withdraw the
19 face amount of the forfeiture from the deposit
20 provided in Section 1306 of this title. The
21 Commissioner shall then immediately direct the
22 professional bondsman, by mail with return receipt
23 requested, to make additional deposits to bring the
24 original deposit to the required level. Should the

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

21 5. If the actions of any bail bondsman force the Insurance
22 Commissioner to withdraw monies, deposited pursuant to Section 1306
23 of this title, to pay past due executions more than two (2) times in
24 a consecutive twelve-month period, then the license of the

1 professional bondsman shall, in addition to other penalties, be
2 suspended automatically for one (1) year or until a deposit equal to
3 all outstanding forfeitures due is made. The deposit shall be
4 maintained until the Commissioner deems it feasible to reduce the
5 deposit. In no case shall an increased deposit exceed two (2) years
6 unless there is a recurrence of withdrawals as stated herein.

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

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

22 F. The district attorney or municipal attorney shall not
23 receive any bonuses or other monies or property for or by reason of
24 services or actions in connection with or collection of bond

1 forfeitures under the provisions of Section 1301 et seq. of this
2 title, except that the court may award a reasonable attorney fee in
3 favor of the prevailing party for legal services in any civil action
4 or proceeding to collect upon a judgment of forfeiture.

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

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

18 I. Upon a motion to the court, any person executing a bail bond
19 as principal or as surety shall be exonerated after three (3) years
20 have elapsed from the posting of the bond, unless a judgment has
21 been entered against the surety or the principal for the forfeiture
22 of the bond, or unless the court grants an extension of the three-
23 year time period for good cause shown, upon motion by the
24 prosecuting attorney.

SECTION 2. This act shall become effective November 1, 2015.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
February 12, 2015 - DO PASS